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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1311. ~~873~~ ~~527~~ 246

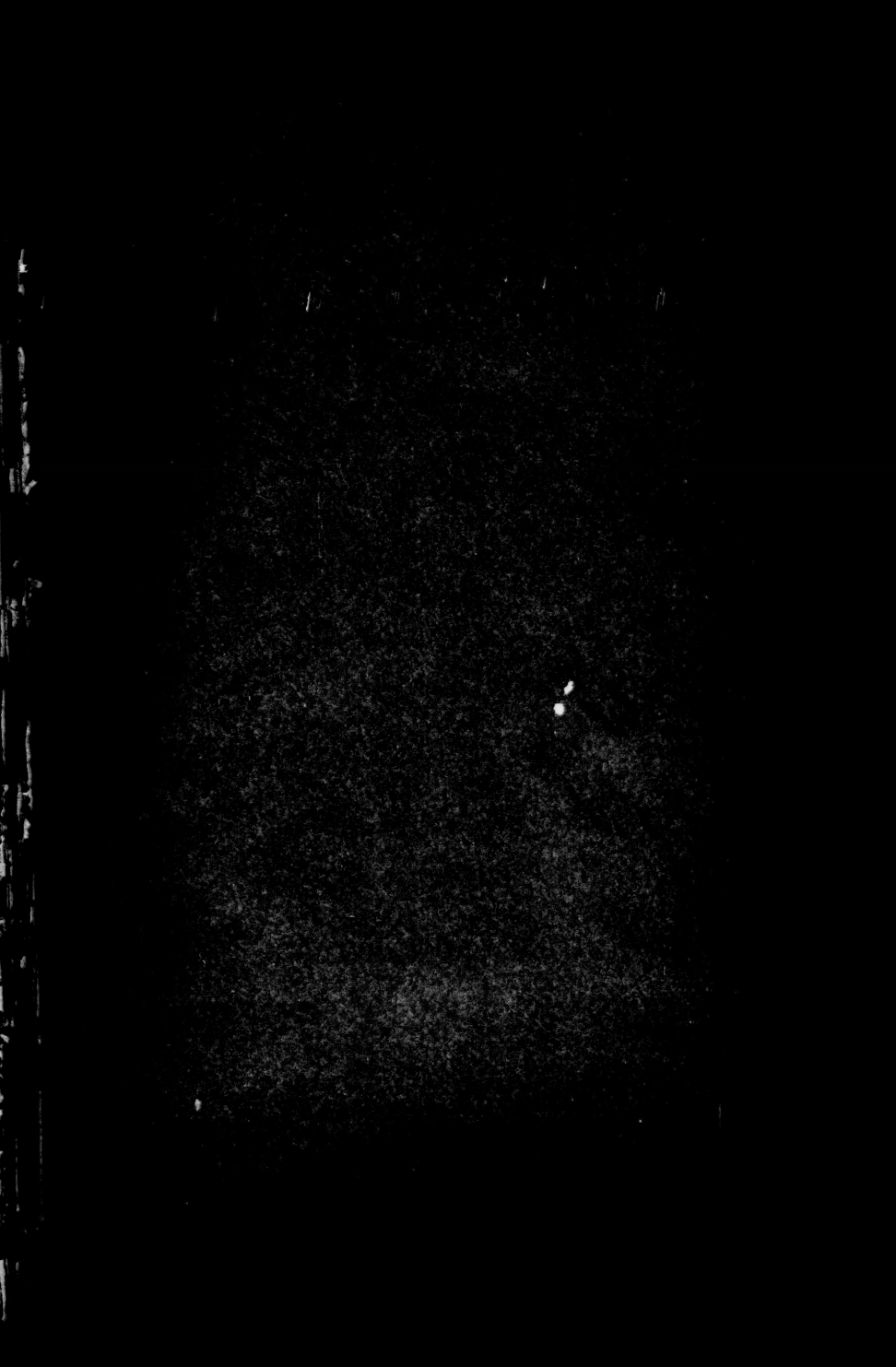
P. P. PICKARD, COMPTROLLER OF THE STATE OF TENNESSEE, APPELLANT,

vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED APRIL 5, 1886.



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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 MIDDLE DISTRICT OF TENNESSEE:

At a circuit court of the United States begun and held in the Federal court-room, in the custom-house, in the city of Nashville, in the district aforesaid, on the third Monday, being the 19th day, of October, A. D. 1885.

On the 27th day of October, 1885, the following proceedings were had, to wit:

Present and presiding: The Hon'l- John Baxter, United States circuit judge.

On the 25th day of July, 1884, a bill was filed in the words and figures following, to wit:

2 To the honorable the judges of the circuit court of the United States for the middle district of Tennessee:

The East Tennessee, Virginia and Georgia Railroad Co., having its principal place of business and office at Knoxville, Knox county, Tennessee, brings its original bill against P. P. Pickard, comptroller, &c., a citizen of Tennessee, and a resident of Davidson county, Tennessee.

And thereupon your orator complains and shows unto your honors that on the 9th day of February, 1850, the Legislature of Tennessee passed an act entitled "An act to incorporate the Nashville and Louisville Railroad Company." (See Acts of 1849–50, chapter 76, p. 239.) By the 40th section of this act it is provided that the roads to be built by said company, the fixtures, depots, workshops, warehouses, and vehicles of transportation belonging to said company, shall be forever exempt from taxation by the State, by any
3 municipal or corporate police, or other authority, or by any town, city, county, or district.

In the year 1853 the Legislature of Tennessee passed an act entitled "An act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company." (See Acts 1853–54, chapter 301, p. 645.) By the eighth section of this act it is provided that said company shall be and is vested with all the rights, powers, and privileges of the Nashville and Louisville Railroad Company, except as otherwise provided in the said act of 1853. By these words the said Cincinnati, Cumberland Gap and Charleston Railroad Company became clothed and invested with a great many powers and rights and privileges not necessary here to be referred to, but among them the privilege of exemption or freedom from taxation, as the same was conferred upon the Nashville and Louisville Railroad Company by the said act of 1850.

By an act passed January 27th, 1848, entitled "An act to
4 incorporate the East Tennessee and Virginia Railroad Company," the Legislature of Tennessee enacted that said railroad Co.'s road and all its appurtenances and fixtures, including workshops, warehouses, and vehicles of transportation, except slaves, shall be exempt from taxation for a period of twenty years from the completion of the said company's road, but no longer. (See Acts of 1847–48, chapter —, p. —.)

By an act passed Dec. 22nd, 1853, entitled "An act to amend an

act to charter the Lexington and Knoxville Railroad Co.," the Legislature of Tennessee amended the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company by providing that the said company shall be and is vested with all the rights, powers, and privileges of the East Tennessee and Virginia Railroad Company, except [as] otherwise provided in the said act, and in the act originally incorporating the said Cincinnati, Cumberland Gap
5 and Charleston railroad, hereinbefore referred to. (See Acts of 1853–54, chapter 324, section 6, page 762.)

By the provisions of this act the said Cincinnati, Cumberland Gap and Charleston Railroad Company became clothed with all the powers and all the rights and all the privileges conferred upon the East Tennessee and Virginia Railroad Company which were not possessed by or conferred upon the Nashville and Louisville Railroad Company, if any such there were; and among the privileges so possessed or enjoyed, and which were conferred upon said Cincinnati, Cumberland Gap and Charleston Railroad Company, was the exemption from taxation for twenty years, which was conferred upon the said East Tennessee and Virginia Railroad Company, if it should be held that by its original charter the said Cincinnati, Cumberland Gap and Charleston Railroad Company did not acquire an exemption from taxation by reason of being clothed with all the rights, powers, and privileges of the Nashville
6 and Louisville Railroad Company, because the Nashville and Louisville Railroad Company did not possess such an exemption, or because the same did not pass to the Cincinnati, Cumberland Gap and Charleston Railroad Company, but if the Nashville and Louisville Railroad Company did possess such exemption from taxation, and if the same exemption from taxation was conferred upon and passed to said Cincinnati, Cumberland Gap and Charleston Railroad Company by its original act of incorporation, then the exemption from taxation for twenty years conferred upon the East Tennessee and Virginia Railroad Company would not have passed to said Cincinnati, Cumberland Gap and Charleston Railroad Co., for the reason that the privilege of exemption of taxation had already been conferred by its original charter, which
7 gave it all the powers, rights, and privileges of the Nashville and Louisville Railroad Company, among which was a perpetual freedom from any kind of taxation.

This was a privilege different from the one conferred upon the East Tennessee and Virginia Railroad Company in this, that it is larger and more valuable.

By an act passed in 1855 or 1856, amending the charter of the Cincinnati, Cumberland Gap and Charleston railroad, it was provided as follows:

"Be it enacted, &c., That an act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company, passed Nov'r 18, 1853, shall be so amended that whenever said railroad company shall have subscribed in *bona fide* stock an amount sufficient to grade said railroad from or near Point Rock, the southern boundary line of the State, to its intersection with the East Tennessee and Virginia

railroad at Morristown, or from Cumberland Gap, the north-
8 ern boundary line of the State, to the East Tennessee and Virginia railroad, they shall have all the rights, powers, and privileges conferred by this charter for the period of ninety-nine years, and shall be entitled to all the benefits of State aid granted to said road by existing laws." (See Acts 1855–56, chapter 49.)

These various acts constitute the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company. Your orator will and does insist that thereby the entire property and estate of the said Cincinnati, Cumberland Gap and Charleston Railroad Co. became and still is clothed with an exemption from taxation for the period of 99 years from and after the passage of said act of 1855; or in any event, if mistaken in this, to an exemption from taxation for a period of 20 years from and after the completion of its said road, under its charter and the existing laws of the State of Tennessee.

9 Your orator would now further show unto your honors that under the act of Feb'y 11th, 1852, of the State of Tenn., known as the internal improvement act, and various amendments thereto, the said Cincinnati, Cumberland Gap and Charleston Railroad Company became largely indebted to the State of Tenn. for and on account of bonds loaned to it under the said internal improvement act and its said several amendments, and its property became and was covered with a statutory mortgage for the payment of the semi-annual interest accruing upon the bonds loan-d to it, and for the ultimate payment to the State of the principal represented by the face of the bonds loaned to it under said act and its said amendments. In company with many other roads in Tennessee, the said Cincinnati, Cumberland Gap and Charleston Railroad Company defaulted in the payment of said interest for a long space of time, and was wholly and utterly unable to even pay the
10 principal. In the endeavor to secure itself against loss, and in pursuance of the right and power expressly reserved in the 12th section of the said internal improvement act, to enact any further legislation that might be deemed necessary to protect or secure the State against loss in the premises, the Legislature of Tennessee passed the acts of July 1st, 1870 (Acts 1870, chap. 79), December 21st, 1870 (Acts 1870–71, chap. 23), and February 1st, 1871 (Acts 1870–71, chap. 102).

Under and by virtue of the provisions of the legislation a bill was filed by the State in the chancery court of Davidson county, Tenn., against all delinquent railroad companies, and among them the said Cincinnati, Cumberland Gap and Charleston Railroad Company, for the purpose of foreclosing said statutory mortgage and for other purposes. By the first section of said act of December
11 21st, 1870, the said chancery court of Davidson county was given exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controver-y of whatever nature, whether of law or fact, that have arisen, or may arise, touching the rights and interests of the State, and also of the stockholders, bondholders, creditors, and others in said roads; also to declare the exact amount

of indebtedness of each of said companies to the State, and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interests in said roads, or either of them, and what shall be the reserved rights of the companies, stockholders, and others respectively, as against said purchasers, after such sale, under existing laws.

By the 10th section of said act it is expressly enacted (and that, too, for the benefit of the State, and in order to make the property to be sold bring the very highest price) that upon a sale
12 under said act all the rights, privileges, and immunities appertaining to the franchise or road so sold under its act of incorporation and the amendments thereto, and the general improvement law of the State and acts amendatory thereof, shall be transferred to and vested in such purchaser, and the purchaser shall hold said franchise or property subject to all liens and liabilities in favor of the State, as now provided by law, against the railroad companies.

In the said bill filed by the State against the said Cincinnati, Cumberland Gap and Charleston Railroad Company and others the following charge is made against it, and in connection with the State's claim: "The Cincinnati, Cumberland Gap and Charleston Railroad Company was incorporated 1853–'54." (See acts, p. 645, with powers, &c., of Nashville and Louisville Railroad Company, as passed 9th February, 1850, p. 239, amended by act of 1855–'56, p. 55; also by act 1859–1860, p. 171, section 3.) * * *
13 "The road is 44 miles long, runs from Morristown, on East Tennessee and Virginia railroad, to Wolf creek, has no connections, and is hopelessly insolvent and worthless."

Among other things, the State prayed that decrees might be passed declaring the exact amount of indebtedness due from each of the defendant companies, and defining, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads or either of them; also for a decree to sell said roads, with all their property, franchises, and rights, if necessary or proper on final hearing or manifestly for the interest of all parties and expressly or tacitly assented to by such parties, such sale to be made by the commissioners appointed by the Legislature, the proceeds to be paid to the parties entitled under the orders and decrees of the court, or upon the principles settled by such orders and decrees.

14 In the course of this proceeding the amount of indebtedness due from the said Cincinnati, Cumberland Gap and Charleston Railroad Company was ascertained and fixed by decree, a minimum price fixed for which the same should be sold, all questions effecting the State's interests adjudged; also the rights of the bondholders, stockholders, and creditors, as well as the rights of the said Cincinnati, Cumberland Gap and Charleston Railroad Company itself; and on the 6th day of July, 1871, the said chancery court of Davidson county, upon the pleadings, previous proceedings, and proofs, made a decree settling the rights of parties and purchasers, in and by which it was decreed, among other things, that upon the

sale of any of the franchises of any or either of the railroad companies defending the said suit by the commissioners under the decrees in said cause and the provisions of said acts of December 21st, 1870, all the rights, privileges, and immunities appertaining to the franchise (so sold) under the acts of incorporation and the amendments thereto, and the general improvement law of the State and the acts amendatory thereof, shall be transferred to and vest in such purchasers, who shall hold said franchise subject to all liens and liabilities in favor of the States, as now provided by law against the railroad companies, so far as may be necessary to secure the purchase-money aforesaid, and the other rights of the State, under the decrees in said cause and the said act of the Legislature; and it was therefore ordered, adjudged, and decreed accordingly *and* that the rights of the parties and purchasers (franchises) be adjudged and settled in accordance with the court's opinion in said decree.

On the 20th day of September, 1871, the said court in said cause pronounced another decree adjudging that the rights of a purchaser would be as above set forth in said decree of July 6th, 1871, and as provided in section 10 of the act of December 21st, 1870, hereinabove referred to.

After the entry of the foregoing proceedings, all of which were fully and publicly known to purchasers and prospective purchasers, to wit, on the 10th day of Octo., 1871, C. M. McGhee and associates made a bid for the said Cincinnati, Cumberland Gap and Charleston railroad, etc., which bid was in the words and figures following, to wit:

"NASHVILLE, TENN., *Oct.* 10*th*, 1871.

"To the commissioners for the sale of delinquent railroads for the State of Tennessee:

"I hereby propose upon the part of myself, R. T. Wilson, and associates to pay ($300,000) three hundred thousand dollars in bonds of the State of Tennessee, with January, 1871, coupons attached, for the Morristown or Cincinnati, Cumberland Gap and Charleston railroad. For and in consideration I expect a full and perfect title to the road, including the State's interest, franchises, and privileges.

"I will, within a few days, pay one-fourth of the amount and execute proper bond for deferred payments. I will require sufficient time to allow the bonds for first payment to be sent me from New York.

"Yours respectfully, C. M. McGHEE."

This proposition was accepted by the commissioners and by them reported to the court for acceptance and confirmation or rejection. On the 30th day of Octo., 1871, the court confirmed the sale of said property of the said Cincinnati, Cumberland Gap and Charleston Railroad Company to the said C. M. McGhee and his associates, and, among other recitals and adjudications, made the following, to wit:

That it appeared to the court that a sale of the Cincinnati, Cum-

berland Gap and Charleston railroad, with its property and
18 franchises, had been made by the commissioners in conformity with the previous decrees entered in said cause; it was therefore adjudged and decreed and ordered that said sale be confirmed, and that the commissioners retain the bond given for unpaid purchase-money and collect the residue of said purchase-money as the same falls due, and when the same is fully paid make title to the purchasers according to the terms of the contract and the former decrees of the court in said cause. The court also decreed that the purchasers should have immediate possession, and that the cause should be retained in court for the purpose of any further orders or decrees necessary to effectuate and protect the rights of the purchasers or of the State as against the purchasers, or the property and effects sold, with leave to the parties to apply for such further proceedings whenever necessary. In this same decree, the former decrees
19 referred to, under which said roads were sold, as being meant, are described as the decrees of March 25th, 1871, Book S, p. 593; the decree of April 8th, 1871, in Book T, p. 22; and the decree of July 6th, 1871, in Book T, pp. 369, 370, 371, and 372, to which latter decree direct reference is made as to the rights of said purchasers of said Cincinnati, Cumberland Gap and Charleston railroad under the decree confirming the said sale to them and as a further declaration of the rights of the said purchasers of said railroad.

Certified copies of said original bill and the said decrees hereinbefore referred to are hereto attached as a part of this bill and marked Exhibits 1, 2, 3, 4, 5, and are prayed to be taken as a part thereof, but need not be copied.

Afterwards, to wit, on the 6th day of June, 1884, the said C. M. McGhee and R. T. Wilson, by petition addressed to the chancellor of the said chancery court of Davidson county, Tenn.,
20 and verified by oath, caused and procured the title to said property to be vested in your orator, upon the ground that they merely acted as the trustees or agents of your orator in making said purchase; that your orator had fully paid the purchase money and not themselves, and that the property had always been and still is run by and at the sole expense of your orator. Upon said petition a decree was rendered, a certified copy being filed herewith, marked "Exhibit 6," and made a part thereof. In and by said last-mentioned decree your orator has become vested with the titles to the rights, property, franchises, and privileges formerly belonging to the said Cincinnati, Cumberland Gap and Charleston Railroad Company, and all the legal rights incident to its said ownership as the same are defined by the former decrees in said cause of The State of Tennessee *vs.* The Edgefield and Kentucky Railroad Company *et al.*, and as defined and fixed by the laws of Tennessee for and
21 during a period of 99 years from and after the year 1855. A full transcript of the proceedings in said cause will be produced on or before the hearing of this cause, if required, or, if not, waived.

Notwithstanding the foregoing facts your orator shows and charges

that the State board of railroad tax assessor- for the years 1883 and 1884 have assessed the said property now owned by your orator, but formerly belonging to said Cincinnati, Cumberland Gap and Charleston Railroad Company, at the sum of $10,000.00, and have certified the same to the comptroller, and he is about to and very soon will certify to the authorities of the counties and towns through which the said road runs the various amounts upon which, under said assessment, they will levy a tax, and seek to enforce the same against your orator by suit or distress warrant and sale, &c. The laws under which said railroad tax assessors profess to be
22 acting are found in the public acts of Tennessee as follows:

Acts of 1875, chapter 78; acts of 1877, chapter 19; acts of 1881, chapter 104; and acts of 1882, second extraordinary session, chapter 16. In so far as said acts may purport to or do clothe said assessors with power to make an assessment against that portion of your orator's property which formerly belonged to the said Cincinnati, Cumberland Gap and Charleston Railroad Co., and which was purchased by your orator under the proceedings in said cause in the chancery court of Davidson county, they are null and void, both under the constitution of Tennessee and the Constitution of the United States of America, because they violate the obligation of the contract contained in the charter of said Cincinnati, Cumberland Gap and Charleston Railroad Co., the benefit of which was legally transferred to and vested in your orator, as the purchaser of said company's property, as herein shown, that contract being that said property should be exempt from taxation of any and
23 every kind for the period of ninety-nine years from and after the year 1855, even after a sale to your orator.

The certification by the comptroller of the said assessment to the counties and towns lying along the line of said Cincinnati, Cumberland Gap and Charleston railroad will cause and produce a multiplicity of suits, will cause your orator much expense and vexatious litigation, and should a sale occur, in any instance, it would create a cloud upon the title to said property.

Unless restrained by your honors, the said Comptroller P. P. Pickard, the respondent herein, will certify said assessment to said counties and towns, and his action will result in the mischiefs stated.

The amount of taxes which would be claimed by the State and by the several counties and towns along the line of said Cincinnati, Cumberland Gap and Charleston Railroad would amount, in
24 the sum total, to not less than $4,200.00 for each of the years 1883 & 1884.

Being remediless in the premises, save in your honors' court, your orator prays that the defendant, P. P. Pickard, may be compelled to appear and answer each and every allegation of this bill; that your honors grant unto your orator a restraining order or injunction against the defendant restraining him and his successors in office from certifying any assessment that [has] been or may be made by said railroad tax assessors against the said property, which formerly belonged to the Cincinnati, Cumberland Gap and Charleston Railroad Company, but which is now owned by your orator, under

or by virtue of said acts of 1875, 1877, 1881, and 1882, hereinbefore referred to as providing for the assessment of railroad property for taxation, and that said P. P. Pickard, comptroller, &c., and his successors in office, be likewise enjoined from attempting to collect any taxes from your orator in favor of the State of Tennessee based upon any assessment made or to be made under said acts of 1875, 1877, 1881, and 1882 until the further order of the court; that your orator may have a writ of subpœna against the said defendant, P. P. Pickard, and a decree against him on the final hearing, perpetually enjoining him in the premises as hereinbefore prayed, and thereby establishing the exemption from taxation herein claimed by your orator.

If in anything your orator has mistaken the special relief to which it is or may be entitled, then your orator prays for such further and general relief as in equity and good conscience it may show itself entitled in the premises upon the pleadings and proof in the cause; and as in duty bound it will ever pray, &c.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,
By WM. M. BAXTER, *Sol'r.*

WM. M. BAXTER,
Of Counsel and Solicitor.

UNITED STATES OF AMERICA,
Eastern District of Tennessee, Northern Division:

At Knoxville, in the county of Knox, and district aforesaid, on this 14th day of July, 1854, before me personally appeared Henry Fink, vice-president and general manager of the above-named East Tennessee, Virginia and Georgia Railroad Company, who, being duly sworn according to law, deposeth and saith that he is the general managing agent of the board of directors of the complainant in the foregoing bill, and has read the same and knows the contents thereof; that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on information and belief of the complainant, and as to those matters he believes it to be true.

HENRY FINK.

Subscribed and sworn to before me this July 14, 1884.
A. R. HUMES,
Clerk U. S. C't C't, E. D. of Tenn.

U. S. Circuit Court for the Middle District of Tenn.

EAST TENN., VA. AND GA. RAILROAD CO.
vs.
P. P. PICKARD, Comptroller, &c.

Upon application of the complainant, it is ordered that the defendant be, and he hereby is, restrained from certifying any assessment that has or may be made by the railroad tax assessors of or against that portion of complainant's property which *which* formerly belonged

to the Cincinnati, Cumberland Gap and Charleston Railroad Company, assessed under the acts of 1875, 1877, 1881, and 1882, particularly mentioned in complainant's bill, and that he be further restrained from collecting or attempting to collect any tax so assessed against said property in favor of the State of Tennessee based on any assessment made or to be made under said acts until its application for the injunction prayed for in complainant's bill shall be heard and disposed of.

28 Said application for injunction will be heard at chambers, at Knoxville, on the 1st Monday of September, 1884, or at such other time and place as the court may, with the consent of the parties, hereafter designate. A copy of this order will be issued by the clerk and served by the marshal on the defen-ant.

Knoxville, Tennessee, July 22nd, 1884.

JNO. BAXTER,
U. S. Judge, D.

Summon-.

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon P. P. Pickard, comptroller, &c., a citizen of Tennessee and a resident of Davidson county, if to be found in your district, to be and appear before the judge of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-room at Nashville, in said State, on the third Monday in Oct. next, then

29 and there to answer a bill filed on the equity side of the docket of said court by the East Tennessee, Virginia and Georgia Railroad Company. Herein fail not, and have then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 25 day of July, in the year of our Lord eighteen hundred and eighty-4, and of the Independence of the United States the 109 year.

LEWIS T. BAXTER, *Clerk.*

Memorandum.

The defendant is required to enter his appearance in the office of the clerk of this court on or before the 1st Monday of Sept. next and plead, answer, or demur or the bill will be taken *pro confesso* and set for hearing *ex parte.*

LEWIS T. BAXTER, *Clerk.*

Executed as commanded July 26, 1884.

G. N. TILLMAN,
U. S. Marshal.

30 *Restraining Order.*

The President of the United States of America to the marshal of the middle district of Tennessee, Greetings:

Whereas the East Tennessee, Virginia & Georgia Railroad Company has filed a bill in the United States circuit court for the middle district of Tennessee against P. P. Pickard, comptroller, &c., praying for an injunction; and whereas Hon'l John Baxter has ordered that a restraining order issue against defendant, and that he be summoned to appear at chambers, at Knoxville, in said district, on the 1st Monday of September, 1884, to show cause why a temporary injunction should not issue:

Now, therefore, you are hereby commanded to restrain and enjoin said P. P. Pickard, comptroller, &c., from certifying any assessment that has or may be made by the railroad tax assessors of or against that portion of complainant's property which formerly belonged to the Cincinnati, Cumberland Gap and Charleston R. R. Co.,
31 assessed under the acts of 1875, 1877, 1881, and 1882, particularly mentioned in complainant's bill, and that he be further restrained from collecting or attempting to collect any tax so assessed against said property in favor of the State of Tennessee based on any assessment made or to be made under said acts until its application for the injunction prayed for in complainant's bill shall be heard and disposed of. And you will also notify said P. P. Pickard, comptroller, or his attorn*ies*, to appear before said court at chambers, at Knoxville, Tenn., on the 1st Monday in September next, to show cause why a temporary injunction should not issue as prayed for, &c.

Herein fail not and due return make hereof.

Witness the Hon'l M. R. Waite, Chief Justice of the Supreme Court of the U. S., and the seal of our said circuit court, this July 25th, 1884.

LEWIS T. BAXTER, *Clerk*,
By CHAS. NASH, *D. Cl'k.*

32 Executed July 25, 1884, on P. P. Pickard, comptroller, as commanded, by making known contents of the within and leaving with him copy of the same.

G. N. TILLMAN,
U. S. Marshal.

Answer.

The answer of P. P. Pickard, comptroller of the State of Tennessee, to the bill of complaint filed in the circuit court of the United States for the middle district of Tennessee by the East Tennessee, Virginia and Georgia Railroad Company against respondent.

Reserving the usual benefit of exceptions, respondent, answering, says:

1st. It is not true that on the 9th day of Feb'y, 1850, or at any other time, the General Assembly of Tennessee passed an act incor-

porating the Nashville and Louisville Railroad Company, and by section 40 of said act undertook to exempt the property of such company from taxation. It is true a conditional act of that character was passed at the time stated, but in fact the condition
33 recited in the act was never complied with, and therefore said supposed act never became effective, nor was said corporation ever organized.

2. It is true that in the year 1853 the General Assembly of Tennessee passed an act entitled "An act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company," and that by section 8 of said act it is provided that said company shall be clothed with the rights, powers, and privileges of the Nashville and Louisville Railroad Company, except as otherwise provided, but it is not true an exemption from taxation passed to the Cincinnati, Cumberland Gap and Charleston Railroad Company under this or any other section of said act, and this for the reason the language employed in the last act is not sufficient to pass such exemption, and for the further reason the Nashville and Louisville Rail-
34 road Company never had an existence, either by corporate organization or legislative grant.

3. It is true that by an act passed Jan'y 27th, 1848, entitled "An act to incorporate the East Tennessee, Virginia and Georgia Railroad Company," there is a qualified exemption from taxation of certain properties of said company for a limited period, and it is true that by an act passed Dec'r 22nd, 1853, entitled "An act to amend an act to charter the Lexington and Knoxville Railroad Co," the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company was amended, but it is not true that such amendment carried with it the qualified exemption from taxation as charged.

4. If respondent be mistaken as to the legal effect of the terms used in said acts, yet by section 6 of the act incorporating the Cincinnati, Cumberland Gap and Charleston Railroad Company it is provided that the "rights and privileges" proposed to be
35 granted by the State are made contingent upon the completion of said road from Cumberland Gap to the East Tennessee and Virginia railroad or to the southern boundary line of the State of Tennessee, and in fact this was never done. No part of said road has ever been built from Cumberland Gap to Morristown or to the southern boundary line of the State of Tennessee. The only piece of the road built at all was a part of the road beginning at Morristown and ending at Wolf creek, in Tennessee. It follows, therefore, that the question of the supposed exemption does not arise under the facts, as the condition upon which they were to attach was never performed.

5. It is true by chapter 49 of the acts of 1855–'6 the charter of said company was again amended, but respondent denies that this amendment operated to pass an exemption from taxation, but if mistaken in this, yet, upon information and belief, respondent
36 denies that in point of fact there was subscribed in "*bona fide* stock an amount sufficient to grade said railroad from or near Point Rock, the southern boundary line of the State, to its intersec-

tion with the East Tennessee and Virginia railroad at Morristown, or from Cumberland Gap, the northern boundary of the State, to the Tennessee and Virginia railroad at Morristown," and it was upon the performance of this condition alone such exemption could pass.

6. Respondent submits that as the requirement of the act incorporating the East Tennessee and Virginia Railroad Company was that the construction of said road should be begun in 5 years and finished in 10 years, and as the Cincinnati, Cumberland Gap and Charleston Railroad Company took the exemption, if at all, coupled with this restriction, and as it did not in fact commence its
37 road and finish it in ten years, therefore it did not perform the condition requisite to entitle it to such exemption.

7. Respondent again submits that as the grant of incorporation to the Cincinnati, Cumberland Gap and Charleston Railroad Company was coupled with the condition that said road should be finished within ten years, and as — in fact failed to perform the condition upon which the alleged exemption rested, it follows the exemption did not pass, even if so intended, upon the performance of the condition. Respondent will exhibit and rely upon all the acts of assembly incorporating said company and amending its charter.

8. It is true said company became largely indebted to the State for bonds issued to it, and it is true that the property and franchises of said company were sold for the indemnity of the State, but it is not true that it was intended to sell an exemption from taxation, nor was such exemption in fact sold. It will appear from an
38 examination of the decree of March, 1871, that the decree of sale was a matter of consent, and that a reference was had to ascertain the value of the property and franchises of said company only, and then only — under the agreement were estimated. It is clear, therefore, that as to this road it is not intended to sell anything more than its "property and franchises."

9. Respondent does not concede complainant has correctly stated the legal effect of the statutes and judicial proceedings adopted for a sale of the property and franchises of the insolvent railroad companies of the State, but as all these matters are available without pleading, the points of difference will not be set out on the hearing.

10. Respondent is advised that if an exemption existed, as is asserted, with said company not to tax its property for the time fixed, the statutory mortgage of the State did not nor could not embrace this exemption, for the plain reason the exemption could not
39 be of value to the State, and could not pass to the assignee or successor of the company. Respondent insists, therefore, that it is not possible, in any view, that complainant can have the supposed exemption under the sale as alleged, even if so intended, which resp't denies. Respondent is advised that if the exemption existed at all it was available alone to said company, and that its successor or assignee can take it only by a new legislative grant, and as no such grant is asserted, and if asserted, not available by reason of the prohibition of the constitution, respondent submits that in no view is it possible for complainant to assert the alleged exemption.

11. It is true C. M. McGhee and R. T. Wilson bought the property and franchises of said company, and that the sale to them was confirmed, and, so far as the rights of the purchasers were concerned, the confirmation of the sale fixed them. No divestiture of title was necessary.

40 It may be true that on the 6th of June, 1884, McGhee and Wilson filed their petition as charged, but respondent denies that said court had jurisdiction to pronounce the decree recited, and if it did, respondent denies that such decree could in any way fortify complainant's alleged title to the exemption claimed. Respondent admits the said road and the property connected with it was assessed for taxation as charged, and at the amount stated, and that the assessment so made was certified as charged, and respondent insists he has the right to enforce the collection of the taxes upon said property.

13. Respondent has been informed and believes that all the rolling stock and all other movable property on said road is the property of complainant, bought and put there by it since its purchase of said road, and its effort now is to find exemption for its own property under an alleged exemption to said original company.

41 Having fully answered, respondent prays to be dismissed.

B. J. LEA,
VERTREES AND VERTREES AND
A. S. MARKS,
Solicitors.

STATE OF TENNESSEE, *Davidson County:*

Personally came before—the undersigned, P. P. Pickard, and in due form of law made oath that the matters and things stated in the foregoing answer as of his own knowledge are true, and those stated as upon information of others he believes to be true.

P. P. PICKARD.

Sworn to and subscribed before me April 25, 1885.

LEWIS T. BAXTER, *Clk.*

42 *Amended Answer.*

EAST TENN., VA. & GA. R. R.
vs.
P. P. PICKARD, Comp., &c.

Respondent, P. P. Pickard, by leave of the court, by order thereof, further answering, says that on the — day of ——, 187–, all of the property of the Cincinnati Railroad Company was duly assessed by the railroad assessors of the State of Tennessee and the several counties thereof, and the amount of taxes due the county of Hamblen were certified, as required by law, to the county of Hamblen, one of the counties of said State, and thereupon due process was issued to compel the payment of said taxes; and thereupon the complainant, The East Tenn., Va. & Ga. Railroad Company, paid

the taxes due said county of Hamblen under protest, and, in pursuance with the statutes in such cases provided, instituted its action against the collecting officer of said county and against said county, in the circuit court of Hamblen county, to recover the taxes so paid, upon the ground that the property of said Cincinnati, Cumberland Gap & Charleston Railroad Company was, under its charter, exempt from taxation, and that the exemption of taxation passed to comp't under its purchase of the property and franchises of said company. And respondent says that said suit was tried upon its merits by said circuit court, and resulted in a judgment against complainant upon the merits of said suit, and by said judgment it was adjudged
43 that the property of said railroad company was not exempt from taxation. And thereupon compl't appealed said suit to the supreme court of the State of Tennessee, and said suit was again heard upon its merits, and said judgment of the circuit court was in all things affirmed. And thereupon compl't appealed said suit to the Supreme Court of the United States, and at the Oct. term, 1880, of said court said judgment was affirmed by said court upon a hearing of said suit upon its merits, and by said judgment of said Supreme Court of the United States it was adjudged that the property and franchises of said Cincinnati, Cumberland Gap & Charleston Railroad Company were not exempt from taxation in the hands of complainant. And respondent says that said suit was about the same matter and raises the same issues as are made by compl't in its present bill. And respondent says the assessment and the taxes paid thereon and sought to be recovered in said former suit were assessed by the assessing officers of the State of Tennessee, and were certified by the comptroller to said county of Hamblen, and that the right of the State to assess said property and franchises for State taxation was directly involved in said suit, and that the assessment and collection of said taxes sought to be arrested by compl't by its bill was proceeding under the same statutes as said former
43½ assessments and collection. And resp'd't says that the present suit is about the same matter, raises the same issues, and is between the same parties and their privies, and he therefore says that all the matters and issues raised by compl't's bill were adjudicated in said former suit upon the merits, and he relies upon *upon* such adjudication in bar of this suit.

VERTREES & VERTREES,
COLYAR, MARKS & CHILDRESS,
Sols.

STATE OF TENNESSEE, *Davidson County:*

Personally appeared before me the undersigned, P. P. Pickard, & in due form of law makes oath that the matters & things stated in the foregoing answer, as of his own knowledge are true and those stated upon information he believes to be true.

P. P. PICKARD.

Sworn to and subscribed before me May 4th, 1885.

CHAS. NASH,
Dep'y Cl'k U. S. Cir. Court.

Endorsed: Filed May 4th, 1885. Lewis T. Baxter, cl'k, by Chas. Nash, D. cl'k.

44 *Injunction.*

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

In pursuance of an order of the U. S. circuit court for the middle district of Tennessee, entered on the 4th day of May, 1885, in the case of the East Tenn., Va. and Geo. R'y Co. *vs.* P. P. Pickard, comptroller, &c., No. 2681, and entered on page 396 of Minute Book R, you are hereby ordered and commanded to strictly "enjoin P. P. Pickard, comptroller, &c., from certifying any assessment that has been made or may be made by the railroad tax assessor of Tennessee against the property which formerly belonged to the Cincinnati, Cumberland Gap and Charleston Railroad Company, but which is now owned by the East Tenn., Va. and Geo. R'y Co., under or by viritue of the acts of the General Assembly of Tennessee for the years 1875, 1877, 1881,
and 1882, providing for the assessment of railroad property
45 for taxation, and likewise enjoin said P. P. Pickard, comptroller, &c., from attempting to collect any taxes from the East Tenn., Va. and Geo. R'y Co. in favor of the State of Tennessee, based upon any assessment made or to be made under said acts of 1875, 1877, 1881, and 1882, until the further order of the court," as prayed for in complainant's bill filed in said cause. Herein fail not and true return make of how you have executed this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 20th day of May, A. D. 1885.

LEWIS T. BAXTER, *Cl'k.*

Replication.

In the Circuit Court of the United States for the Middle District of Tennessee. In Equity.

EAST TENN., VA. AND GA. RAILROAD COMPANY
vs.
P. P. PICKARD, Comptroller, &c. } No. 2681.

46 The complainant now comes, and saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the answer made by the def't in this case, for replication thereunto, says that it will aver and prove its bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said def't is uncertain, untrue, and insufficient to be replied to by this complainant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall

direct, and humbly prays as in and by its said bill it has already prayed.

WM. M. BAXTER,
Solicitor for Complainant.

47 *Stipulation.*

In the Circuit Court of the United States for the Middle District of Tennessee. In Equity.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY
vs.
P. P. PICKARD, Comptroller. } No. 2681.

It is stipulated in this cause as follows: The respondent, by his solicitors, hereby waives the production of a full transcript of the case of the State of Tennessee *vs.* The Edgefield and Kentucky Railroad Company *et al.*, referred to and offered to be filed in the original bill herein; and it is agreed that either party may file such parts of the record as he may deem necessary or material to a proper understanding and decision of the cause, and that no advantage is to be taken of the fact that a full transcript is not filed, or that the transcript is incomplete, as a matter of fact.

This Sept. 5th, 1885.

CALYAR, MARKS AND CHILDRESS,
VERTREES AND VERTREES,
Sol'r's for Def's.
WM. M. BAXTER, *Sol'r for Compl't.*

48 *Stipulation.*

EAST TENN., VA. AND GA. RAILROAD CO.
vs.
P. P. PICKARD, Comptroller, &c. } No. 2681.

It is stipulated herein that some work was done on the Cincinnati, Cumberland Gap and Charleston railroad in the year 1860, between Morristown, Tenn., and the North Carolina line, and that the road was graded from Morristown to the French Broad river, and was finished as far as Wolf creek, so that trains were run over the same about the year 1868; and that the French Broad river (where said road was so graded) is about two and a half miles beyond Wolf creek and about six and a half miles short of the North Carolina line at Point Rock; and that since said Cincinnati, Cumberland Gap and Charleston railroad has belonged to the complainant herein said railroad between Wolf creek and Point Rock was finished about the year 1881 or 1882. The road from Morristown to Cumberland
49 Gap was never built.

It is further stipulated and agreed that the transcript of the record in the case of Hamilton County *vs.* East Tennessee, Virginia and Georgia Railroad Company, as the same is of record and remains on file in the Supreme Court of the United States, shall be

treated as a part of the record and transcript of the record in this cause, both upon the trial thereof in this court and upon appeal to the supreme court of Tennessee in said cause, and the opinion of the Supreme Court of the United States in said cause as the same appears reported in 102 U. S., at page 273; and that all of said records and opinions may be used and referred to as fully as if they were filed in evidence or copied in the record as exhibits in this cause in this court. This stipulation is made to save the costs of procuring, filing, and transcribing certified copies of said record and opinions.

This October 27th, 1885.

WM. M. BAXTER,
Sol. for Compl't.

B. J. LEA,
A. S. MARKS,
VERTREES AND VERTREES,
By JOHN J. VERTREES,
Sol's for Def't.

50 United States Circuit Court for the Middle District of Tennessee.

MONDAY MORNING *May 4th*, 1885.

Court met pursuant to adjournment.
Present and presiding: Honorable D. M. Key, U. S. judge, &c.
The following proceedings were had, to wit:

EAST TENNESSEE, VA. AND GA. R. R. Co.
vs.
P. P. PICKARD, Comptroller, &c. } No. 2681.

Complainant's motion for an injunction in this cause *pendente lite* having been argued by counsel and considered by the court, it is ordered that the injunction prayed be allowed, and the clerk will issue a writ of injunction as prayed for in the bill in this cause. This order should have been entered on the 21st day of April, 1885, and is entered now for then.

And on the same day the following proceedings were had, to wit:

51 Upon motion and for satisfactory reasons appearing to the court, defendant is permitted to amend his answer so as to rely upon a former adjudication in bar of complainant's suit, and said amendment is filed accordingly.

On the 25th day of May, 1885—present and presiding, Hon'l D. M. Key, U. S. judge—the following proceedings were had, to wit:

Came the parties, by their attorneys, and by consent the *pro confesso* entered herein on February 2nd, 1885, and entered on page 220 of rule docket No. 3 is set aside. This order should have appeared on the minutes for April 25, 1885, and is entered now for then.

52 On October 27th, 1885—present and presiding, Hon'l John Baxter and D. M. Key, U. S. judges—the following proceedings were had, to wit:

EAST TENN., VA. AND GA. R. R. CO.
vs.
P. P. PICKARD, Comptroller, &c. } 2681.

This cause *having* this day having been finally heard upon the pleadings, proofs, exhibits, and stipulations of counsel, the court adjudges and decrees that the temporary injunction heretofore granted in this cause shall be and is made perpetual, and that complainant have and recover of respondent the costs of the cause, for which execution may issue. From the foregoing decree the respondent prays an appeal to the next term of the Supreme Court of the United States, which is granted upon respondent executing an appeal bond in the sum of $500 within sixty days from this date.

53 MIDDLE DISTRICT OF TENNESSEE:

I, Lewis T. Baxter, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in the cause in equity lately determined in said court, wherein The East Tennessee, Virginia and Georgia Railroad Company were complainants and P. P. Pickard, comptroller, &c., was defendant, so far as the same appears of record and on file in my office.

Witness my hand and the seal of said court, at office, in Nashville, in said district, this the 5th day of December, 1885.

[Seal Circuit Court U. S., Middle District Tenn.]

LEWIS T. BAXTER, *Clk.*

54 *Bill of Costs.*

EAST TENN, VA. & GA. R. R. CO.
vs.
P. P. PICKARD, Comptroller, &c. } 2681.

Clerk's fees	$36 30
Marshal's fees	6 00
Att'y's fees	20 00
Am't paid for record filed as "Ex.," by Jno. J. Vertrees	10 50
	$72 80

Paid March 8th, 1886, by P. P. Pickard, comptroller of the State of Tennessee.

LEWIS T. BAXTER, *Clk.*

Endorsed on cover: M. Tennessee C. C. U. S. No. 1311. P. P. Pickard, comptroller of the State of Tennessee, appellant, *vs.* The East Tennessee, Virginia & Georgia Railroad Company. Filed April 5, 1886.

1 *Stipulation.*

In the Supreme Court of the United States.

P. P. PICKARD, Comptroller, &c., Appellant,
vs.
THE EAST TENN., VA. & GA. RAILROAD COMPANY, Appellee.

Appeal from the circuit court of the U. S. for the middle district of Tenn.

In this cause it appearing that a portion of the record in the court below, viz., the proceedings had in the chancery court of Davidson county, Tennessee, on the petition filed therein June 3d, 1884, in the case of The State of Tennessee *vs.* The Edgefield & Kentucky R. R. Co. *et als.*, were by mistake omitted from the transcript of the record filed in this court, and that a diminution of the record ought
2 to be suggested, it is now agreed by the parties to this cause that the amendment aforesaid shall be made by the clerk without suggestion, &c., and certiorari, and that the additional transcript of said omitted record now on file shall be received and treated as a part of the record the same as if it had been contained in the original transcript.

This December 20th, 1888.

WM. M. BAXTER,
Sol'r for E. T., V. & G. R. R. Co.
P. PICKARD,
Comptroller,
By G. W. PICKLE, *Sol'r.*

3 *Addition to the Transcript of the Record in the United States Supreme Court upon Suggestion of Diminution.*

The Circuit Court of the United States, Middle District of Tennessee.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD
vs.
P. P. PICKARD, Comptroller of the State of Tennessee.
} Equity No. 2681.

The following decree of the chancery court of Davidson county, State of Tennessee, of June sixth, 1884, was filed in said cause in words and figures as follows, to wit:

THE STATE OF TENNESSEE
vs.
THE EDGEFIELD & KENTUCKY RAILROAD *et al.*
} No. 6688.

This cause coming on to be further heard before the Hon. A. G. Merritt, chancellor, etc., on this sixth day of June, 1884, upon the petition of C. M. McGhee and R. T. Wilson, and the former decree

and proceedings in the cause, and it appearing to the court that at a sale made by the commissioner for the sale of delinquent railroads of the Cincinnati, Cumberland Gap & Charleston Railroad Company's property and franchises and the State's interest in the same, which sale was made by the authority and in pursuance of the decree heretofore rendered in this cause, the aforesaid C. M. McGhee and R. T. Wilson, for the benefit of the East Tennessee, Virginia & Georgia Railroad Company, became the purchasers thereof at the sum of three hundred thousand dollars in the bonds of the State, and that said sale was duly reported to and confirmed by the court; and *that* it further appearing to the satisfaction of the court, by the admission of the solicitor for the State, that the purchase-money agreed to be paid has been paid according to the terms of the sale, and also by the certificate of the comptroller, which is in the words and figures following, to wit:

To the Honorable A. G. Merritt, chancellor, etc.:

The undersigned, at the request of the solicitor of the purchaser of the property, etc., formerly belonging to the Cincinnati, Cumberland Gap & Charleston Company, and which was sold under decrees of your honor's court in the case of The State of Tennessee *vs.* The Edgefield & Kentucky Railroad Company *et al.*, would say that the purchase-money bid and agreed to be paid for the Cincinnati, Cumberland Gap & Charleston railroad property, etc., of said company has been fully paid and the State has received the same, as appears of record in the comptroller's office, except the record does not show the style of the case under which the said property was sold.

This June 5th, 1884.

P. P. PICKARD,
Comptroller.

And it further appearing that said purchasers became such as trustees for the East Tennessee, Virginia & Georgia Railroad Company, and that said company paid the entire purchase-money therefor, and that said McGhee and Wilson consent that the title to said property may be decreed and vested in said East Tennessee, Virginia & Georgia railroad, as fully appears by the petition of said purchasers, which is in words and figures following:

To the Hon. A. G. Merritt, chancellor, etc., sitting at Nashville:

Your petitioners, C. M. McGhee and Richard T. Wilson, would respectfully show unto your honor that, under decrees pronounced by this honorable court in the case of the State of Tennessee *vs.* The Edgefield & Kentucky Railroad Company *et al.* (lately pending), your petitioners became the purchasers of record of all the property, effects, and franchises of the Cincinnati, Cumberland Gap & Charleston Railroad Company, a defendant to said suit, under and by virtue of the decree entered in said cause October, 30th, 1871, and former decrees therein referred to. As such purchasers they were put into possession of said road on or about the fourteenth day of No-

vember, 1871, the president and receiver of said company surrendering the possession to their agent, Joseph Jacques. At that time your petitioners were officers and directors of the East Tennessee, Virginia & Georgia Railroad Company, and the said Jacques was its agent, superintendent, etc. Said purchase was made for your petitioners for the benefit of the said East Tennessee, Virginia & Georgia Railroad Company solely, your petitioners acting merely as the agents or trustees of said company in becoming the bidders for said property; said property was turned over, in fact, to said East Tennessee, Virginia & Georgia Railroad Company when it was delivered to said Jacques, in November, 1871, and has been since exclusively run by, at the expense of, and for the sole benefit of the said East Tennessee, Virginia & Georgia Railroad Company.

Your petitioners would further show that the entire purchase-money for said road has been and was paid by the said East Tennessee, Virginia & Georgia Railroad Company and not by your petitioners. Your petitioners would further show that no decree divesting title or vesting title has ever been made, nor has any decree ever been entered showing that said purchase-money has been fully paid and discharged. Your petitioners would further show that two of the commissioners who were directed to make title to the purchasers according to the terms of the contract and the former decrees of the court are dead, and that the remaining commissioner has long since been relieved and discharged.

The premises considered, your petitioners pray that a decree be entered by their consent, which is herein and hereby expressly given, vesting the title to the said property, effects, and franchises of the said Cincinnati, Cumberland Gap & Charleston Railroad Company in the East Tennessee, Virginia and Georgia Railroad Company as the real and original purchasers thereof under the decrees entered in said cause preceding the sale of said Cincinnati, Cumberland Gap & Charleston Railroad Company's property, etc., and adjudging that the purchase-money has been fully paid and discharged, to the end that said property may be decreed to the real purchaser, and that your petitioners may have a decree releasing them of all liability by reason of the execution of a bond signed by them for the purchase-money, etc. As in duty bond, your petitioners will ever pray.

C. M. McGHEE.
R. T. WILSON.

WM. M. BAXTER, *Solicitor.*

STATE OF NEW YORK, *New York City & County:*

Personally appeared C. M. McGhee, known to me to be the petitioner named in the foregoing petition, and made oath that he has read the foregoing petition and knows the contents thereof, and that the same is true.

C. M. McGHEE.

6 Subscribed and sworn to before me this the 21st day of May, 1884.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of May, A. D. 1884.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner for Tennessee in New York,
115 & 117 *Broadway, N. Y. City.*

STATE OF NEW YORK, *New York County & City:*

Personally appeared before me Richard T. Wilson, known — me to be the petitioner named in the foregoing petition, and made oath that he has read the foregoing petition and knows the contents thereof, and that the same is true.

R. T. WILSON.

Subscribed and sworn to before me this 21st day of May, 1884.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of May, 1884.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner for the — Tennessee in New York, New York City, 115 & 117 *Broadway, New York City.*

I acknowledge myself as surety for costs of foregoing petition and proceedings thereunder.

W. M. BAXTER.

In conformity with the prayer of said petition and by consent of said McGhee and Wilson the court is pleased to order, adjudge, and decree that all the right and title, interest, claim, and demand which the Cincinnati, Cumberland Gap & Charleston Railroad Company, its stockholders, creditors, or the State of Tennessee, and all parties to this suit (including the said McGhee and Wilson) have in and to the property, rights, franchises, and privileges of said company, and which were sought to be and under the decrees of this court were ordered to be sold and transferred, be divested out of them and each and every of them and vested in the said East Tennessee, Virginia & Georgia Railroad Company, with all the legal and equitable rights incident thereto as defined in the former decrees of this court in this cause and for the period prescribed by law.

The petitioners, C. M. McGhee and R. T. Wilson and The East Tennessee, Virginia & Georgia Railroad Company and their surety, W. M. Baxter, will pay the costs of this proceeding, for which
7 execution may issue.

Certificate and Seal.

STATE OF TENNESSEE, *Davidson County:*

I, Thomas W. Wrenne, clerk and master of the chancery court at Nashville, do hereby certify that the foregoing contains a full, true, and perfect copy of a decree rendered on the sixth day of June, 1884,

and entered on page 245 of Minute Book 19, in the cause wherein The State of Tennessee is complainant and The Edgefield & Kentucky Railroad Company and others are defendants, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court, at my office, in the court-house at Nashville, this the 24th day of June, 1884, and in the 108th year of American Independence.

THOMAS W. WRENNE,
Clerk & Master,
By WM. SMITH, [SEAL.]
D. C. & M.

I, H. M. Doak, clerk of the United States circuit court for the middle district of Tennessee, hereby certify that the foregoing is a true, perfect and complete transcript of a decree filed in the above-styled cause of The East Tennessee, Virginia & Georgia Railroad Company *vs.* P. P. Pickard, comptroller of the State of Tennessee, No. 2681, equity, and endorsed "Exhibit No. 6," and further endorsed, "Filed July 25, 1884—Lewis T. Baxter, clerk U. S. circuit court, by Chas. R. Nash, deputy clerk," and omitted from the record to the Supreme Court of the United States; that the same is a part of said record, now added upon suggestion of diminution of the record.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the court, at my office, in Nashville, Tennessee, this the 11th day of December, 1888.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK,
U. S. Cir. C't Clerk.

Bill of costs:

Transcrip-, 20 folios	2 00
Seal	20
Cert.; 2 p.	30
	$2 50

H. M. DOAK, *Clerk.*

[Endorsed:] U. S. circuit court, middle district of Tennessee. Equity No. 246. The East Tennessee, Virginia & Georgia R. R. Company *vs.* P. P. Pickard, comptroller State of Tenn. Additional transcript.

8 [Endorsed:] Supreme Court U. S. 1888, October term. No. 246. P. P. Pickard, comptroller, &c., app't, *vs.* The East Tenn., Va. & Georgia R. R. Co. Stipulation of counsel & addition to record. Filed Jan. 7, 1889.

STATEMENT OF THE CASE.

The question in the case is, whether a railroad in Tennessee, that was formerly owned by the Cincinnati, Cumberland Gap and Charleston Railroad Company, but which was afterward purchased and is now owned by the appellee, the East Tennessee, Virginia and Georgia Railroad Company, is now exempt from taxation.

The State of Tennessee, denying that any such exemption existed, caused this railroad to be assessed for taxation. The appellant, the Comptroller of the State, was proceeding to collect the tax assessed for the years 1883 and 1884, when the appellee filed this bill in the Circuit Court of the United States, at Nashville, to enjoin the collection of these taxes on the ground that it was exempt from taxation.

The road in question was begun by the Cincinnati, Cumberland Gap and Charleston Railroad Company. The charter of this company is to be found in three acts of the Legislature of Tennessee, viz.: (1) An act passed November 18th, 1853; (2) another passed December 22d, 1853; (3) and a third act passed December 17th, 1855.

The Act of November 18th, 1853, referred to an act passed February 9th, 1850, chartering the *Nashville and Louisville* Railroad Company, and purported to vest in the Cincinnati, Cumberland Gap and Charleston Railroad Company the "rights, powers, and privileges" granted by that act (of February 9th, 1850) to the Nashville and Louisville Company.

It is claimed now by the appellee that these enactments granted, among other privileges, that of exemption from taxation for ninety-nine years to the Cincinnati, etc., company.

The Charter Act of December 22d, 1853, referred to an act passed January 27th, 1848, chartering the *East Tennessee and Virginia* Railroad Company, and purported to invest the Cincinnati, Cumberland Gap and Charleston Railroad Company with all the "rights, powers, and privileges" granted by that act (of January 27th, 1848) to the East Tennessee and Virginia Railroad Company.

It is now claimed by the appellee that these enactments, among other privileges, granted that of exemption from taxation for twenty years to the Cincinnati, Cumberland Gap and Charleston Railroad Company.

The Charter Act of December 17th, 1855, had no other effect than to change one of the conditions (prescribed by the Charter Act of November 18th, 1853) upon which the privileges granted should vest. The Act of November 18th, 1853, provided that a certain

part of the road should be first *completed*. The Act of December 17th, 1855 (without in anywise referring to the Act of December 22d, 1853), provided that when stock sufficient to *grade* that part of the road had been *bona fide* subscribed, then the privileges, powers, etc., granted by the Act of November 18th, 1853, should be possessed.

It is thus seen that the appellee claims that these acts granted *two* exemptions to the Cincinnati, Cumberland Gap and Charleston Railroad Company—one for twenty, and another for ninety-nine years.

The State of Tennessee, under a general internal improvement system inaugurated in 1852, loaned a large amount of her bonds to this Cincinnati, Cumberland Gap and Charleston Railroad Company to aid in the construction of its road, reserving a statutory lien on the road and its essential franchises for their payment.

The company defaulted.

In 1871 the State filed a bill in the Chancery Court at Nashville, Tenn., to enforce this statutory lien. This Cincinnati, Cumberland Gap and Charleston Road was sold by virtue of these proceedings October 10th, 1871, at public sale, to C. M. McGhee for "himself, R. T. Wilson, and associates." October 19th, 1871, the sale was confirmed.

Before April 16th, 1877, said McGee and Wilson "sold, and by proper conveyances conveyed," said railroad to the appellee, the East Tennessee, Virginia and Georgia Railroad Company. (*Post, p.* 59.)

April 16th, 1877, an agreed case was made up between Hamblen County, a county in Tennessee, and the appellee, to test the question whether this road was exempt from taxation in the hands of the appellee.

At the October term, 1880, this Court decided in that case that the road was not exempt, but was liable to be taxed. (102 *U. S.*, 273.)

June 6th, 1884, the appellee filed a *petition* in said original case in the Chancery Court at *Nashville*, wherein the road had been sold in 1871, stating that in reality Messrs. McGhee and Wilson had not purchased the road for *themselves*, but as agents and trustees of the appellee; and that the appellee had furnished the money to pay for the road, and had run it ever since the purchase in 1871. (*Trans.*, 19, 20.)

Upon that petition a decree was entered in that case, vesting the appellee with all the privileges formerly belonging to the Cincinnati, Cumberland Gap and Charleston Railroad Company for ninety-nine years from and after 1855. (*Trans.*, 20–1.)

This having been done, the appellee filed this bill July 25th, 1884, to enjoin the collection of the taxes which had been assessed for 1883–1884, on the ground that the road was exempt from taxation when owned by the Cincinnati, Cumberland Gap and Charleston Railroad Company, and that this exemption passed to, and is now enjoyed by the appellee, the East Tennessee, Virginia and Georgia Railroad Company, the present owner of the road.

His Honor, John Baxter, the Circuit Judge, held that the road was exempt and could not be taxed. The grounds upon which this decision was based are in substance as follows: *

The word "privilege" includes an exemption from taxation;

The Cincinnati, Cumberland Gap and Charleston Railroad Company was possessed of an exemption from taxation;†

It was the intention of the State to pass this exemption under the term "privilege" to the purchasers at the judicial sale in 1871, and such exemption did pass to them by virtue thereof;

It was competent for the State to provide that this *existing* exemption should pass to the purchaser, notwithstanding the Tennessee Constitution of 1870, forbidding exemptions from taxation to be made;

The decision of this Court in *Railroad v. Hamblen County* (102 U. S., 273), was made "upon" an imperfect and limited statement of facts, and is no authority against the decision "of the Circuit Judge."

The transcript of the record in *Railroad v. Hamblen County*, filed in this Court, October 24th, 1877 (102 *U. S.*, 273), is, by agreement, made a part of this record; and it is re-printed as an appendix to this brief.

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* This opinion is reported in full in 24 Fed. Rep., 614.

† Whether for ninety-nine or twenty years is not stated.

ERRORS.

The decree rendered below is erroneous, because—

1. *The ninety-nine-year exemption claimed was never vested in the Cincinnati, Cumberland Gap and Charleston Railroad Company in the first instance.*

2. *The twenty-year exemption claimed was never vested in said Cincinnati, Cumberland Gap and Charleston Railroad Company in the first instance.*

3. *Even if both, or either, of these exemptions vested in said Cincinnati, Cumberland Gap and Charleston Railroad Company, neither ever passed to or vested in said purchasers, Wilson and McGee, nor the appellee, their grantee; because the State of Tennessee reserved a lien only upon the* ROAD AND FRANCHISES, *and in proceedings to enforce this lien could and did sell* ONLY *the property to which the lien so enforced attached. The State had no lien on any exemption from taxation; and therefore no such exemption passed to the purchaser of this property sold under judicial proceedings.*

4. *Even if such an exemption as that claimed was vested in the Cincinnati, Cumberland Gap and Charleston Railroad Company, and even if the State of Tennessee, in the act providing for the enforcement of her lien against the delinquent railroad, had expressly provided that the exemption from taxation then enjoyed by said Cincinnati, Cumberland Gap and Charleston Railroad Company should pass to the purchaser of its road when sold under said proceedings, nevertheless no such exemption could be passed or conferred, because the Constitution of Tennessee, in force when said statute (ordering a sale) was enacted, forbade and prohibited such exemptions.*

5. *This precise question has been settled and adjudicated in the case of Railroad v. Hamblen County*, 102 *U. S.*, 273; *and no fact stated in that agreed case is contradicted successfully by any new fact in the present case.*

6. *Even if the exemption claimed passed as a "privilege" to said purchasers, Wilson and McGee, it did not pass from them to their grantee, the present appellee.*

7. *The proceedings had in the Chancery Court at Nashville upon the "petition" filed June 6th*, 1884, *are ineffectual to transfer the exemption claimed to the appellee. Said proceedings were, in effect, ex parte, and without notice to the State; and the procedure was an improper and unauthorized attempt to resuscitate a case that had practically been ended ten years, and inject into it an element upon which to build the present litigation.*

These questions are all raised by the defendant's answer.

Appellant submits that the court below erred in not finding and decreeing as stated above, and in finding and decreeing as in said opinion (24 *Federal Reporter*) is shown was found, and made the basis of the decree below.

ARGUMENT.

It is the purpose of this argument to establish two propositions, namely:

I. THE CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD COMPANY ITSELF HAD NO EXEMPTION FROM TAXATION.

II. EVEN IF THIS CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD COMPANY HAD SUCH AN EXEMPTION, IT NEVER PASSED TO ANY PURCHASER OR SUBSEQUENT OWNER OF THE ROAD CONSTRUCTED BY THAT COMPANY, AND NOW OWNED BY THE APPELLEE.

It is obvious that if either of these propositions is true, the decree rendered by the Circuit Court should be reversed.

I.

NEITHER AN EXEMPTION FROM TAXATION FOR TWENTY YEARS, NOR FOR NINETY-NINE YEARS, WAS GRANTED TO THE CINCINNATI, CUMBERLAND GAP & CHARLESTON RAILROAD COMPANY, AND THEREFORE NONE COULD HAVE PASSED TO THE PURCHASER OF THE ROAD AT THE SALE.

These ninety-nine-year and twenty-year exemptions are claimed through different acts of the Legislature of Tennessee.

So much of these acts as is material to an understanding of the ninety-nine-year claim is as follows:

The first act chartering the Cincinnati, Cumberland Gap and Charleston Railroad Company was passed November 18th, 1853. Among other things, not now material to be stated, it provided:

SECTION 6. That whenever said company (*the Cincinnati, Cumberland Gap and Charleston Railroad Company*) shall have *completed* that part* of said road from Cumberland Gap to the East Tennessee and Virginia Railroad, or to the southern boundary line of the State of Tennessee, they shall have all the rights and *privileges* conferred by this charter for the period of *ninety-nine* years. (*Acts Tenn.*, 1853–4, *p.* 647, *Ch.* 301, § 6.)

SEC. 8. That said company shall be, and they are hereby vested with all the rights, powers, and *privileges*, and subject to all the *restrictions* and liabilities of the Nashville and Louisville Railroad Company, except otherwise provided for in this charter. (*Ib.*, § 8.)

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* All italics are ours.—COUNSEL FOR APPELLANT.

December 17th, 1855, an act was passed, amending this Act of November 18th, 1853, which did not so much as refer to the Act of December 22d, 1853. This Act of 1855 provided:

SECTION 1. That an act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company, passed November 18th, 1853, shall be so amended that whenever said railroad company shall have subscribed in *bona fide* stock an amount sufficient to *grade* said railroad from or near Point Rock, the southern boundary line of the State, to its intersection with the East Tennessee and Virginia Railroad at Morristown; or from Cumberland Gap, the northern boundary line of the State, to the East Tennessee and Virginia Railroad, they shall have all the rights, powers, and privileges conferred by *this charter* for the period of ninety-nine years, and shall be entitled to all the benefits of State aid granted to said road by existing laws. (*Acts Tenn.*, 1855–6, *Ch.* 49, *p.* 55.)

The only effect of the Act of 1855 on the act amended was to change the sixth section of that act. That (6) section provided that whenever the road was *completed* between certain points the company should have all the rights and privileges *conferred by the charter* for ninety-nine years. The Amendatory Act of 1855 provided that when *bona fide stock* had been subscribed *sufficient to grade* the road between those points the company should have all the rights and privileges conferred by the charter. It did not pretend to declare what those rights were.

As has been shown, section eight of the Act of 1853 (*supra*) vested the company with the rights, powers, and privileges, *subject to all the restrictions* of the Nashville and Louisville Railroad Company. In reality there never was such company as this last-named com-

pany at all. An act had been passed by the Legislature of Tennessee, February 9th, 1850, to charter such a company, but it never organized. It was abandoned, and the Louisville and Nashville Railroad Company chartered and organized in its stead.

Transcript, pp. 32–3 (*margin pages*).
Goodlett v. Railroad, 122 *U. S.*, 406.
24 *Fed. Reporter*, 617.

By the fortieth section of the Act of 1850, "to charter the Nashville and Louisville Railroad Company, *its* road was exempted from taxation '*in each and every of the States of Tennessee and Kentucky.*'"

While this was one of its "privileges," the act contained several restrictions—among others the following:

SECTION 43. And the said company shall be entitled only to *such* powers and privileges as shall be granted to it by *all* the Legislatures incorporating it, etc.

SEC. 51. That this act shall become a law whenever the State of *Kentucky* may *enact* the same, for the same purpose, with such modifications and amendments as they may deem right, not inconsistent with the provisions hereof, etc.

(*Acts Tenn.*, 1849–50, *Ch.* 76, *p.* 239.)

It is apparent that two important *restrictions* in the act to charter the Nashville and Louisville Railroad Company were: (1) That it should have only such privileges as should be granted by *both* Kentucky and Tennessee; (2) and that it could become a law only when re-enacted by Kentucky also.

Section eight of the original act chartering the Cincinnati, Cumberland Gap and Charleston Railroad Company conferred the same privileges, but subject to the same *restrictions.* It is conceded by all that Kentucky has made no such grant, nor passed any such enactment. It is unnecessary to speculate as to whether these restrictions were imposed by accident or design. Certain it is that it was done; and courts will require all corporations claiming exemption from taxation to do more than show that there was no reason for imposing restrictions upon the immunity claimed. They must show that in *fact* no such restrictions were imposed. However, there may have been, and most probably was a settled purpose to subject the powers and privileges granted to these restrictions. The road was to run from Cincinnati, Ohio, through Kentucky as well as Tennessee. (*Acts Tenn.*, 1853–4, *Ch.* 301, § 1, *p.* 645.) Such restrictions were expressed in the charter of the Nashville and Louisville Railroad Company, because it was to run through Kentucky and Tennessee, and why not as to the Cincinnati, etc., Company, which was to do the same thing?

As neither of these "restrictions" exist or were met, we submit that the ninety-nine-year exemption never vested in the Cincinnati, Cumberland Gap and Charleston Railroad Company.

NO BONA FIDE SUBSCRIPTION OF STOCK.

The charter, as amended by the Act of December 17th, 1855 (*ante, p.* 2), provided that the Cincinnati, Cumberland Gap and Charleston Railroad Company should

have the privileges conferred by the Act of November 18th, 1853 (and as conferred therein), *when* sufficient *bona fide* stock to *grade* the road between certain points was subscribed. Of course such privileges did not vest until that was done.

The answer, under oath, denies that such subscriptions were ever made. (*Trans.*, 36.) No proof was introduced by the appellee upon the point, and it is therefore to be taken that in fact the stock to the requisite amount was never subscribed.

The agreement in the record shows that the road was never *completed* between the points named. (*Post, pp.* 51, 59.)

It shows that "stock was subscribed," but fails to state how much. (*Post, p.* 50; *side p.* 5.)

As $1,373,000 were borrowed from the State, if any *inferences* are to be indulged, they must be that what was done was with this borrowed money, and not *bona fide* stock subscriptions. The issue was made by the pleadings, * and the burden of proof was on the appellee to make clear its claim to the exemption from that burden which all citizens are obliged equally to bear.

CHARTER ACT OF NOVEMBER 18 ALTERED BY LEGISLATURE.

There is another reason why this ninety-nine-year exemption cannot be claimed. The act granting it—and in the view now presented it is *immaterial* whether

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* Transcript, p. 36.

or not there were *any* restrictions coupled with the grant—was passed November 18th, 1853. At the *same* session of the Legislature, and on the twenty-second day of December *thereafter*, an act was passed to charter the Lexington and Knoxville Railroad Company, with power to build a road from Knoxville, in the direction of Louisville, Ky., and Cincinnati, Ohio, "so as to form a continuous railroad connection between said cities." The fifth and sixth sections of this act also amended the Act of November 18th, chartering the Cincinnati, Cumberland Gap and Charleston Company. The sixth section is as follows:

SECTION 6. *Be it enacted*, That * * * * * said Cincinnati, Cumberland Gap and Charleston Railroad Company shall be, and they are hereby vested with all the rights, powers, and *privileges*, and subject to all the *restrictions* and liabilities of the *East Tennessee and Virginia Railroad Company*, except otherwise provided in this act and the act this is intended to amend. (*Acts Tenn.*, 1853–4, *Ch.* 325, *p.* 763.)

That part of the charter of the East Tennessee and Virginia Railroad Company necessary to be considered is the following:

SECTION 30. And the capital stock of said company shall forever be exempt from taxation; and the road, with all its fixtures and appurtenances, including work shops, warehouses, and vehicles of transportation, except slaves, shall be exempt from taxation for the period of *twenty* years from the *completion* of the said railroad, and no longer.

SEC. 31. The railroad authorized by this act shall be commenced within five years after the passage of this act, and shall be *finished* within ten years thereafter, otherwise the charter hereby granted shall be *void*. (*Acts Tenn.*, 1847–8, *Ch.* 120, *p.* 205.)

If the Act of November 18th granted an exemption, it was accomplished by the reference to the *Nashville and Louisville* Railroad Company, and was for a period of ninety-nine years.

If this Act of December 23d granted an exemption, it was accomplished by the reference to the *East Tennessee and Virginia* Railroad Company, and was for a period of twenty years.

The Act of December 23d was amendatory of the Act of November 18th, 1853. It conferred on the Cincinnati, Cumberland Gap and Charleston Railroad Company all the powers and privileges, but subject to all the *restrictions* of the East Tennessee and Virginia Railroad Company, *except* otherwise provided in the Act of November 18th. (*Acts Tenn.*, 1853–4, *Ch.* 324, § 6.) This exception is somewhat confusing, but one of two things must be true: The twenty-year exemption either was or was not engrafted upon the original act as an amendment. If it was, the ninety-nine-year exemption was thereby changed, and reduced to twenty years. If it was *not*, then the twenty-year exemption never vested, because it was within the *exception* of section six of the Act of December 18th, 1853; and in that view of the case it would be a waste of time to discuss it.

If, however, it be held that the twenty-year exemption *was* substituted for the ninety-nine-year one, the first observation is that such holding puts an end to the present claim of an exemption for ninety-nine years. It was, in that event, destroyed by the amendatory act of December.

THE TWENTY-YEAR EXEMPTION.

But this twenty-year exemption rested upon as many conditions and restrictions as did the first one for ninety-nine years. Section thirty of the charter of the *East Tennessee and Virginia Railroad Company*, through which the twenty-year exemption is claimed, provided that the exemption should exist for a period of twenty years from the *completion* of the road. (*Ante, p.* 14.)

Section thirty-one provided that the road should be *completed* within *ten* years from the passage of the act, otherwise the charter should be *void*. (*Ante, p.* 14.)

The exemption claimed must be taken with the restrictions imposed. They are: That the charter is void unless the road is *completed* within ten years from the passage of the act, and that the twenty-year exemption was to begin when the road was *completed*.

The act was passed December 22d, 1853. Allowing the full ten years, the exemption would begin to run December 22d, 1863, and would expire December 22d, 1883. The result is that the tax claimed by the Comptroller for the year 1884 should be paid, although that for 1883 cannot be demanded by the State. This is upon the assumption that the road was *completed*, and completed within ten years so as to save the charter; *but it was not*. The answer pleads the fact that the road has never been completed.* The burden of proof was upon the appellee, and there is no proof upon the point.

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* Transcript, pp. 34–5.

The agreement made in *Railroad v. Hamblen County* shows that at that date* the road had not been completed. The result is that the railroad company has wholly failed to show that the road has ever been completed, much less that it was completed within the ten years.

NO EXEMPTION BEFORE THE ROAD WAS COMPLETED.

Not only was the exemption from taxation dependent upon the fact that the road should be completed within ten years, but by the terms of the charter the exemption was not to attach or begin to run until *after* the date of such completion of the road.

The statute is as follows:

SECTION 30. And the capital stock of said company shall forever be exempt from taxation; and the *road*, with all its fixtures and appurtenances, including work-shops, warehouses, and vehicles of transportation, except slaves, shall be exempt from taxation for the period of twenty years *from the completion of* the said railroad, and no longer. (*Acts Tenn.*, 1847–8, *Ch.* 120, *p.* 205.)

The case of the *Vicksburg, etc., Railroad Company v. Dennis* (116 U. S., 665) is conclusive of this question.

The Vicksburg, Shreveport and Texas Railroad Company was incorporated April 28th, 1853, under an act of the State of Louisiana. Section 2 of this statute was as follows:

The capital stock of said company shall be exempt from taxation, and its road, fixtures, work-shops, warehouses, vehicles of transpor-

* April 16th, 1877.

tation, and other appurtenances, shall be exempt from taxation for ten years after the completion of said road within the limits of this State.

The road was partially constructed before the late war. In 1879 the road was sold under judicial proceedings instituted by bondholders. In 1881 and 1882 the new corporation formed by the purchasing syndicate made contracts for the completion of the road, but it had not been completed when the suit for taxes was brought.

It was held that the road was not exempt from taxation; that there was no exemption of the road *before* completion, and, as it had not yet been completed, the exemption had not begun.

In that case the language was, "Ten years *after* the completion" of the road. In this case it is, "Twenty years *from* the completion" of the road. But the meaning in both cases is the same. Inasmuch as the road has never been completed, it follows that the exemption never attached in favor of the original company, and that there was therefore nothing to be transferred to the present claimant, the appellee.

IMMUNITY FROM TAXATION NOT A "PRIVILEGE."

If we should concede that all the "conditions" and "restrictions" imposed upon the Cincinnati, Cumberland Gap and Charleston Railroad Company were met and complied with; that the road was duly completed, and that all the "rights, powers, and privileges" conferred on the company by the charter acts fully vested,

there remains one other fatal objection to this claim of exemption. There was no grant of an immunity from taxation, even on condition. The charter acts of this company did not assume to confer upon it any thing more than such "rights, powers, and privileges" as had been previously granted to the *Nashville and Louisville* and the *East Tennessee and Virginia* companies; and nothing is better settled in Tennessee by an unbroken line of decisions than that where one company is chartered by an act which clothes it with the "rights, powers, and privileges" previously granted to another company by some other act, this language is not sufficient to carry an exemption or immunity from taxation which the older companies may possess. The cases referred to are as follows:

RAILROAD v. HAMBLEN COUNTY.

Knoxville, Tenn. (MSS.), September Term, 1877.

The question in this case was as to the taxation of the identical railroad involved in the present case. The case was an agreed one. The question was whether or not the county of Hamblen could tax the road, it being claimed that it was exempt. The agreed case did not set forth that claim to exemption now brought forward, based upon the Act of December 22d, 1853, referring to the charter of the original East Tennessee and Virginia Railroad Company; but it did set forth and rely upon the Nashville and Louisville charter act. As already shown,* the act chartering the Nashville and Louisville Company exempted it from taxation under

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* Page 11 of this brief.

certain restrictions; and the act chartering the Cincinnati, Cumberland Gap and Charleston Railroad Company vested it with "all the rights, powers, and privileges" of the Nashville and Louisville Company. The Court held that these words did not carry or grant the *exemption* from taxation.*

WILSON v. GAINES, COMPTROLLER.

9 Bax., 546, December Term, 1877.

The Nashville and Chattanooga Railroad Company was chartered by the State of Tennessee December 11th, 1845. By the thirty-eighth section of the charter act its capital stock was exempted from taxation forever, and its road, etc., also exempted for twenty years from the completion of the same.

In 1852 the Edgefield and Kentucky Railroad was chartered by an act of Tennessee, the sixth section of which invested the company with all the *rights and powers and privileges* of the Nashville and Chattanooga Railroad Company, chartered in 1845.

In December, 1855, another act was passed conferring upon the Edgefield and Kentucky Railroad Company all the *rights and privileges* which had been conferred upon the Nashville and Southern Railroad Company by an act passed in 1852, which act conferred on this Nashville and Southern Railroad Company all *the rights and powers and privileges* of the Nashville and Chattanooga Railroad Company. In fine, the act chartering the Edgefield and Nashville Railroad Company invested it

* See opinion of McFarland, J., in Appendix to this brief, pages 70–1.

with the same *rights, powers, and privileges* which had been conferred upon the Nashville and Chattanooga Railroad Company.

This was one of the roads to which State aid was extended by Tennessee, under the General Internal Improvement Act of 1852, and upon which a statutory lien was retained by the State. The road was sold by decree of the Chancery Court at Nashville when all the other delinquent roads were sold in Tennessee. The "road, its franchises, property, rights, privileges, etc.,"* were sold under the decree. The owners of the railroad filed a bill to enjoin the Comptroller, on the ground that the road was exempt from taxation.

The Court held that no exemption existed, because the original Edgefield and Kentucky Railroad Company had none itself; that an exemption from taxation was not a "privilege," but an "immunity," within the meaning of the Constitution of Tennessee.

Furthermore, the Court affirmed *Morgan v. Louisiana* (3 Otto, 217), quoting the language of Mr. Justice Field for the doctrine that an immunity from taxation is personal, and incapable of transfer without express statutory direction. (9 *Baxt.*, 552–3.)

MEMPHIS AND CHARLESTON RAILROAD COMPANY v. GAINES.

3 Tenn. Chy., 604; Supreme Court Tenn. (Mss.)

In this case it appeared that the Knoxville and Charleston Railroad Company, "for the purpose of

* 9 Baxter (Tenn.), p. 548.

working and using said road," was invested by the charter act with all "the rights, powers, and privileges" of the Nashville and Chattanooga Railroad Company.* Upon the authority of the *East Tennessee and Virginia Railroad Company v. Hamblen County*, as decided by the Supreme Court of the State, it was held that the exemption from taxation enjoyed by the Nashville and Chattanooga Railroad Company was never conferred upon the Knoxville and Charleston Railroad Company.†

On appeal to the Supreme Court of Tennessee, the decree of the Chancellor was affirmed.‡

With respect to this question that Court said:

The remaining question arises upon the charter of the Knoxville and Charleston Railroad Company. * * * This being a question where the Supreme Court of the United States has revisory jurisdiction, it is our duty to conform our decisions to the ruling of that tribunal, and we should cheerfully do so in this instance if satisfied that the question had been considered and directly decided; but upon looking to the cases referred to§ it seems to us that the question was taken for *granted*, and not directly made or considered. The case apparently bearing more directly upon the question is *Humphrey v. Pegues*, 16 *Wallace*.

We frankly admit, as we did in the former case,* that the words "rights and privileges," by a liberal, or probably a fair construction, might be held to include an exemption from taxation, as an exemption may be said to be both a right and a privilege; and there are plausible reasons for supposing that the Legislature intended to adopt this

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* 3 Tenn. Chancery Rep., 617; 97 U. S., 711.

† 3 Tenn. Chancery Rep., 617–18.

‡ Opp. Book, Supreme Court Tenn., 1877–8, page 132.

§ Railroad v. Hamblen County, *post*, page 70.

former charter entire; but starting with the rule of construction settled by all the authorities that an exemption cannot be allowed unless explained (*expressed?*) in the clearest language, and that all doubts must be resolved against either exemption, then as rights and privileges as used in charters do not necessarily include exemption, but may have full meaning given to the terms by referring them to other rights and privileges granted in charters; and further bearing in mind that our Constitution uses, in reference to the passing of special laws, the words rights, privileges, immunities, or exemptions—apparently attaching to each word a separate and distinct meaning—we conclude that a grant of the "rights and privileges" of another charter does not necessarily include the exemptions from taxation, and, not being necessarily included, does not pass. See also *Morgan v. Louisiana*, 3 *Otto*, We conclude therefore to adhere to our former determination of this question. The company is not without remedy if we are in error. As to this company the demurrer will be sustained. (*Opp. Book*, 1877–8, *p.* 132.)

MISSISSIPPI AND TENNESSEE RAILROAD v. STATE OF TENNESSEE.

Jackson, Tenn., April Term, 1877 (MSS.).

This case is not reported, but it was cited by the Court as one in which, "after full argument," the same conclusion was reached as in *Wilson v. Gaines*.

9 *Baxter* (*Tenn.*), 549.

RAILROAD COMPANY v. MARION COUNTY.

7 Lea, 665.

This case cites *Wilson v. Gaines* (9 Baxter) for the doctrine that the words "rights, privileges, and property" do not carry an exemption from taxation.

There is no conflict in the decisions of Tennessee, and they are all founded on two propositions: (1) That

an immunity from taxation will not be recognized unless granted in terms too plain to be mistaken; (2) and that the Constitution of Tennessee uses the words "rights, privileges, immunities, and exemptions," and thus indicates a purpose to distinguish between "privileges" and "immunities or exemptions." *

The decisions of this Court do not conflict with those of Tennessee. *Railroad v. Hamblen County* was decided by the Supreme Court of Tennessee upon the ground that the Cincinnati, Cumberland Gap and Charleston Railroad Company—the original company—itself never had any exemption.† This Court affirmed that judgment upon the ground that, even if the Cincinnati, Cumberland Gap and Charleston Railroad Company had an exemption, it did not pass to the purchaser at the judicial sale, as only "property and franchises" were sold. The question whether the original company had an exemption was not passed upon. ‡

Memphis and Charleston Railroad Company et al. v. Gaines, Comptroller, was decided by the Supreme Court of Tennessee upon the same ground as *Railroad v. Hamblen County*. The judgment was affirmed by this Court, on the ground that *such* "privileges" were conferred by the charter act upon the *Knoxville and Charleston Railroad Company* only as were necessary for "the *purpose* of making and using said road," and that an immunity from taxation was not one of these. It is doubtless true that the case was decided upon this narrower

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* Const. Tenn., 1834, Art. XI., § 7; 1870, Art. XI., § 8.

† *Post*, page 71.

‡ 102 U. S., 277.

ground, because of the decision made in 1872 in the case of *Humphrey v. Pegues*, 16 *Wallace*, 244.

That case was as follows:

The Cheraw and Darlington Railroad Company was chartered by the State of South Carolina by an act which conferred upon it all the "rights, powers, and privileges" granted previously to the North-eastern Railroad Company.

This Court held that an immunity from taxation, which the latter company had under its amended charter, was a "privilege" which the Cheraw, etc., company took under this grant to it.

Mr. Justice Hunt said: "We are not advised what *other* powers and privileges were then and there conferred upon it in addition to the exemption we are considering;" and rested the case upon the ground that a "more comprehensive privilege than a perpetual immunity from taxation can scarcely be imagined." No allusion was made, either by counsel or the court, to any special provision of the Constitution of South Carolina. As said by the Supreme Court of Tennessee, the question seems to have been "taken for granted" by this Court.

However, the question has been recently considered again by this Court.

CHESAPEAKE AND OHIO RAILWAY COMPANY v. MILLER.

114 U. S., 176 (1884).

The Covington and Ohio Railroad Company was chartered in 1866 by the Legislature of West Virginia. The seventh section of this act provided that there should be no taxation until the profits amounted to ten per cent. on the capital stock. The road was only partially constructed, and a mortgage was executed to raise funds to complete it. This mortgage was foreclosed in 1877 under a statute of the State, and the property purchased by the Chesapeake and Ohio Railway Company. The statute referred to provided that where a railroad was sold under it the newly created purchasing corporation should succeed to all such "franchises, rights, and privileges" as the first company had.

It was admitted that the first company had the exemption, and the question was whether the last company succeeded thereto. This Court held that it did not, saying that these words "do not *necessarily* embrace a grant of such exemption." (185.) The Court disposed of *Humphrey v. Pegues* (16 Wall., 244) with the remark that "the circumstances of the case distinguish it." (184.)

However that may be, it must be admitted that the term "privileges," upon the facts detailed, was held not to include an "exemption."

For these reasons we submit that the original, the Cincinnati, Cumberland Gap and Charleston Railroad Company, itself had no immunity from taxation.

II.

Even if the Cincinnati, Cumberland Gap and Charleston Railroad Company was Possessed of this Immunity from Taxation, it Never Passed to any Subsequent Purchaser or Owner of the Road.

Under the internal improvement scheme adopted by Tennessee in 1852, no lien was retained to secure the bond loan made by the State upon anything except the roads. There was no lien retained upon any company's immunities. The language of the act is:

> And when the whole of said road shall be completed, the State of Tennessee shall be invested with a lien without a deed from the company upon the entire *road*, including the stock, right of way, grading, bridges, masonry, iron, rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depots and depot stations, for the payment of all of said bonds issued to the company, as provided in this act, and for the interest accruing on said bonds. (*Acts Tenn.*, 1851–2, *Ch.* 151, § 4.)

The State, therefore, had a lien on the road-bed equipments, *essential* franchises, and nothing more.

Tenn. Bond Cases, 114 *U. S.*, 663.
Railroad v. Hamblen Co., 102 *U. S.*, 273.
Railroad Companies v. Gaines, 97 *U. S.*, 712.

A bill was filed to enforce this lien against the delinquent railroad companies, and filed pursuant to an act of the Legislature passed in 1870, directing it to be done.

It is quite obvious that, inasmuch as the State's lien was restricted to the road-bed equipments and essential franchises, nothing could be sold under proceedings to enforce that lien except to which that lien attached—unless something is to be found *additional* to what is provided in the original Act of 1852. This additional legislation is the Act of December 21st, 1870.* The first section, among other things not necessary to be stated, provides:

> And said court (at Nashville) is hereby invested with the exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy of whatever nature, whether of law or of fact, that have arisen, or may arise, touching the rights and interests of the State, and also of the stockholders, bondholders, creditors and others, in said roads, and to make all such rules, orders, and decrees, interlocutory and final, as may be deemed necessary, in order to a final and proper adjustment of the rights of all the parties, preliminary to a sale of the *interest of the State* in said road. Also to declare the exact amount of indebtedness of each of said companies to the State; and likewise to define, *as may be thought proper*, what shall be the *rights*, duties, and liabilities of a *purchaser* of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others respectively, as against said purchasers after such sale, *under the existing laws of this State.* (*Acts Tenn.*, 1870-71, *Ch.* 23, *p.* 25, §1).

Section 7 provides:

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* Acts Tenn., 1870–71, Ch. 23, p. 25.

That in case any of the said railroad companies shall decline a contest with the State in regard to a *sale of the State's interest* in their roads, a sale may at once be made, and upon the final determination of any controversy that may arise between the State and any of said railroad companies in the Chancery or Supreme Court, the *interest of the State* in such roads shall immediately be brought to sale by the commissioners.

SEC. 8. That a specific value shall be fixed upon *the State's interest in each of said roads* by decree, etc.

SEC. 9. That *the interest of the State* in either of said railroad companies may be sold on time, etc.

SEC. 10. That upon the sale of any of the *franchises* of either of the railroad companies by the commissioners, under the provisions of this act, the rights, privileges, and immunities *appertaining to the franchise* so sold, under its act of incorporation and the amendments thereto, and the general improvement law of the State and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the State, as now provided by law, against the railroad companies.

This act was passed only to provide for an enforcement of an existing lien. That upon which the State had a lien was intended to be passed to the purchasers, and nothing more. This precise question arose in *Railroad v. Hamblen County* (102 U. S., 277), and the Chief Justice said:

The Act of December 21st, 1870, does not purport to enlarge the State's interest. It simply provided a way in which the statutory lien, as originally retained, could be enforced, and gave authority, upon a sale of "any of the franchises," to transfer and vest in the purchaser "all the rights, privileges, and immunities" appertaining to the franchises sold. As in this case only franchises "essential to the operation

of the corporation, and without which its road and works would be of little value" (*Morgan v. Louisiana*), were sold, the immunity from taxation did not pass as an incident. (102 *U. S.*, 277.)

His Honor, the Circuit Judge, disregarded the case of *Railroad v. Hamblen County*, in which the foregoing opinion was delivered, because, as he said, it was based "upon an imperfect and limited statement of the facts."

24 *Fed. Rep.*, 624.

But it is obvious that the most imperfect and defective statement of the *facts* of a case cannot affect the question of the interpretation of an *act* of the Legislature, which may have relation to such facts. The Court construed the *act*, and no fact which has been brought out in this record can affect that act.

The Supreme Court of Tennessee has apparently taken a different view of this question. The first case was:

RAILROAD COMPANY v. HICKS.

9 Bax., 442.

This case was decided at the September Term, 1877, of the Supreme Court of Tennessee. The facts are: That the Knoxville and Kentucky Railroad Company was chartered February 25th, 1856, by an act granting exemption from taxation in express terms. The State of Tennessee had the statutory lien retained by the Internal Improvement Act of 1852 upon this road to secure certain bonds. The road defaulted, and was sold under the proceedings in the Chancery Court at Nash-

ville instituted under the act of 1870 to sell all the delinquent roads. The purchasers organized a new company and the sale was confirmed to it. This company claimed the old exemption. The question was not whether the old company had an exemption, for that was conceded; but whether it had been acquired by the new company. The Court held that it had, on the ground that by express terms the decree in the case under which the sale had been made, ordered and *decreed* that the sale should "vest the purchaser with all the rights, *privileges*, and *immunities*" of the old company. (9 *Baxter*, 453.)

The Court expressly dissented from *Morgan v. Louisiana* (93 U. S., 217), upon the ground that the exemption *was a part of the charter*, and could not be repealed by the Legislature; that it was something more than a *personal* privilege, which could not pass without a new legislative grant. (9 *Baxt.*, 457.)

Subsequently, and within less than six months, the same Court decided the case of *Wilson v. Gaines*, which is to be found in the same volume of the Reports with *Railroad v. Hicks.** This case quoted extensively from and approved *Morgan v. Louisiana*, and explained *Railroad v. Hicks.* The Court said that the decree in that case was in pursuance of the Act of 1870, and *equivalent to a legislative grant.*†

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* 9 Bax., 546. See this case, *ante*, p. 30.

† 9 Bax., 551.

THE STATE v. RAILROAD.

12 Lea, 584 (1883).

The Nashville and North-western Railroad Company was incorporated in 1852, and its road was exempted from taxation for twenty-five years from its completion. It was sold like the other roads, and was bought by the Nashville and Chattanooga Railroad Company.

The Court held that the exemption passed to the purchaser. The decision was put upon the ground that by the tenth section of the Act of 1870 (*Acts* 1870–1, *Ch.* 23) all "rights, privileges, and immunities" *appertaining* to the *franchises* sold should vest in the purchaser; and because it was so *decreed* in ordering a sale of the road. (12 *Lea*, 585, 587.)

The case of *Railroad v. Hicks* (9 Bax., 442) was approved.

In *State v. Railroad*, decided in 1887, the Court said that the *immunities* appertaining to the franchise sold passed *under the special terms* of the *State's decree*, according to *State v. Railroad* (12 Lea, 583).

State v. Railroad, 2 *Pickle* (*Tenn.*), 440.

As a matter of statutory interpretation, *State v. Railroad* is unsound. Looking exclusively to the tenth section, as was done, and disregarding all other provisions of this act, it will appear that the "privileges and immunities," which it is provided shall vest in the purchaser,

are such only as are *appertaining to the franchise so sold.* The only franchise sold was that *essential* to the operations of the road, and an exemption from taxation is in no just sense appurtenant or incident thereto.

Railroad v. Hamblen County, 102 *U. S.*, 277.
Morgan v. Louisiana, 93 *U. S.*, 223.
Railroad Company v. Gaines, 97 *U. S.*, 711.

The rule of interpretation in these cases is well settled. It is, that an exemption from taxation is a *personal* privilege of the very corporation specifically referred to, and perishes with it, unless the express and clear intention of the law requires the exemption to pass as a continuing franchise to a successor.

Memphis Railroad Co v. Commissioners, 112 *U. S.*, 617.
Morgan v. Louisiana, 93 *U. S.*, 217.
Wilson v. Gaines, 103 *U. S.*, 417.
L. & N. R. R. Co. v. Palmes, 109 *U. S.*, 244.
Wilson v. Gaines, 9 *Baxt.* (*Tenn.*), 553.

For an immunity from taxation by the State will not be recognized unless granted in terms too plain to be mistaken.

Chicago, etc., Railroad v. Guffey, 120 *U. S.*, 575.

It was upon this principle that *Railroads v. Gaines* (97 U. S., 711) was decided. The meaning which had been accorded to the word "privileges" in *Humphrey v. Pegues* (16 Wall., 244) was so qualified in *Railroad v. Gaines* by the words "for the purpose of making and using the road" as to defeat the claim of exemption.

And so in this case; the immunities granted are such only as *appertain* to the franchise sold, and an immunity from taxation is not one of them.

Wilson v. Gaines, 9 *Baxt.*, 553.
Morgan v. Louisiana, 93 *U. S.*, 223.

The true ground upon which the State decisions rest, and that upon which the Court understood them to stand, was that the decree of sale, being made pursuant to an act of the Legislature, was *equivalent to a legislative grant.* (9 *Baxt.*, 457, 571.)

ALL LEGISLATIVE EXEMPTIONS SINCE 1870 UNCONSTITUTIONAL.

This brings up the enquiry, whether or not under the Tennessee Constitution of 1870 there can be a valid legislative grant of an immunity or exemption from taxation. The Constitution now in force was adopted March 26th, 1870. It requires all property to be taxed, and forbids the Legislature to grant any special "rights, privileges, immunities, or exemptions" to any one.* It was therefore beyond the power of the Legislature to transfer an exemption by an act which, in effect, was a new legislative grant. The question has already been settled by this Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY v. PALMES.

109 U. S., 244.

The Alabama and Florida Railroad Company was chartered by the State of Florida in 1853. Under the

* Constitution Tennessee, 1870, Art. II., § 28; Art. XI., § 8.

general internal improvement laws of that State, then in force, the road, fixtures, etc., were exempted from taxation for a certain term. A mortgage was executed on the road, and in 1872 it was sold under proceedings of foreclosure, and by mesne conveyances came to be owned by the Pensacola and Louisville Railroad Company. An act, passed in 1872, provided that this Pensacola and Louisville Railroad Company should hold the road exempt from taxation as the original company had done. In 1878, pursuant to judicial decrees, the title, rights, privileges, and immunities of the Pensacola and Louisville Railroad Company were transferred to the Pensacola Railroad Company, a company which had been chartered by the State of Florida in 1877, with express power to purchase this road. Acting under legislative authority, the Pensacola Railroad Company sold and conveyed to the Louisville and Nashville Railroad Company. This was the company claiming the exemption.

The Court held that the claim could not be sustained. The Court held also that inasmuch as under the Constitution of Florida, adopted in 1868, there could be no original grant of an exemption from taxation to a railroad corporation, it was impossible for the Legislature to create a corporation capable of acquiring and holding property free from exemption; and that therefore the exemption never passed to the Pensacola Railroad Company, or any of its assignees.

MEMPHIS RAILROAD COMPANY v. COMMISSIONERS.

112 U. S., 609.

The Memphis and Little Rock Railroad was incorporated by an act of the General Assembly of the State of Arkansas, passed January 11th, 1853. The twenty-eighth section of this act exempted the capital stock of the company from taxation, and also the road for twenty years from and after completion. The ninth section of this act empowered the company to borrow money "on the credit of the company and on the mortgage of its *charter* and works." Such mortgages were executed in 1860 and 1871.

In 1874 the present Constitution of Arkansas was adopted. It provides that all property shall be taxed, except such as may be used for certain named public purposes, such as schools, etc.

In 1876 or 1877 the property franchises and charter of the company were sold under judicial proceedings instituted to foreclose the mortgage. Pierson and others became the purchasers at this sale, as trustees for the bondholders. April 28th, 1877, these bondholders executed certain articles of association whereby they purported to re-organize as "Memphis and Little Rock Railroad re-organized." Pierson and his co-trustees conveyed the property purchased by them to this company April 30th, 1877. The commissioners of the State of Arkansas appraised the road for taxation, and this bill was filed to enjoin them on the ground that the exemption had passed to the new association. It was

held that the exemption did not pass by the mortgage of the original company's charter to the purchasers at the judicial sale; and also that the appellant company, not having become a corporate body until after the constitution of 1874 took effect, could not claim an exemption. (*P.* 623.)

ST. LOUIS, ETC., RAILROAD COMPANY v. BERRY.

113 U. S., 465.

The Legislature of Arkansas passed an act in 1853 to incorporate the Cairo and Fulton Railroad Company, and with power also to consolidate with other roads. By the eleventh section of this act the capital stock of the company, and the road until it should pay ten per cent. interest, were exempted from taxation.

The Constitution adopted in 1868 forbade all legislative grants of special immunities or exemptions. In 1868, after this Constitution was in force, the Legislature passed an act to provide for a general system of incorporation, which, among other things, allowed railroad companies to consolidate. The Cairo and Fulton Railroad Company consolidated with the St. Louis and Iron Mountain Railroad Company in January, 1874, under the name of the St. Louis, Iron Mountain and Southern Railway Company. This latter company claimed the exemption from taxation which had been granted to the Cairo and Fulton Railroad Company.

The Court held that the consolidated company was a *new* company, and one which did not come into existence until after the Constitution of 1868 had been

adopted; that it was therefore impossible for this new company to receive the exemption which the Cairo and Fulton Railroad Company had enjoyed, by transfer or otherwise. It will be observed that the charter act of 1853 authorized such consolidations, and that the general act of 1868 also provided for the same.

But it was held that this charter provision was available only so long as it was permissible for the Legislature to grant exemptions; and that a consolidation could not be effected under the Constitution of 1868 so as to carry or transfer the exemption.

The ground of these decisions is that the *real* transaction in legal effect is nothing more nor less than an abandonment of the old charter and a grant *de novo* of a similar charter to so-called purchasers (112 *U. S.*, 622); and this the Constitution of the State forbade.

It may be argued that the State Court decided otherwise in the cases referred to,* but the answer to this is that the question is one of contract or no contract to be impaired, and consequently one which this Court will determine for itself; particularly as the State decision was rendered long after the rights of the parties accrued.

Burgess v. Seligman, 107 *U. S.*, 33.
Bucher v. Cheshire R. R. Co., 125 *U. S.*, 584.
L. & N. R. R. Co. v. Palmes, 109 *U. S.*, 244.
Vicksburg & C. R. R. Co. v. Dennis, 116 *U. S.*, 667.

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* *Ante*, p. 30.

And this is true, regardless of the nature of the decision below. (109 *U. S.*, 257.)

RES ADJUDICATA.

In *Railroad v. Hamblen County* (102 U. S.), an agreed case was made up to determine whether or not this road, then as now the property of the appellee, was taxable under the same laws of Tennessee, the validity of which are questioned in this case. The scheme of railroad taxation under these acts is substantially this: A Board of Assessors, appointed by the Governor, assess all railroads for taxation, fixing the mileage and *pro rata* of the counties through which the road runs. The Comptroller of the State then certifies the amount to be taxed in each county to the Clerk of the County Court of that county, who enters it upon the collector's books.* It will be seen from this that the tax sought to be collected by Hamblen County was assessed by the State of Tennessee, and that Hamblen County was merely one of the instrumentalities through which this tax was collected. To all intents and purposes the decision was a decision between the railroad and the State, and not merely a decision between the railroad and a county of the State. The same title and interest was in dispute. It is true that one of the grounds upon which the exemption is now claimed, namely, the twenty-year exemption under the act referring to the charter of the Nashville and Chattanooga Railroad Company, was not presented in that agreed case; but it was an *agreed* case, and *could* have been included, and

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* Code Tenn., 1884, § 669; Acts Tenn., 1875, Ch. 78.

therefore the decision operates as an *adjudication* now. It certainly does as to all claims expressly made in that case. If that case was "imperfect," it was the railroad company's fault alone.

Dimock v. Revere Co., 117 *U. S.*, 559.
Dickson v. Wilson, 3 *Howard*, 57.
Rolls Co. v. United States, 105 *U. S.*, 733.
Lindley v. Thompson, 1 *Tenn. Chy.*, 272.
Welch v. Harmon, 8 *Yerg.*, 110.
24 *Howard*, 333.
5 *Wallace*, 580.

THE SUPPLEMENTARY PROCEEDINGS AT NASHVILLE IN 1884.

The appellee, however, having instituted this suit upon the idea that the "statement of the facts" in its case against Hamblen County (102 *U. S.*) was "imperfect and limited," has attempted to "perfect" the statement of facts in two ways: First, it has exhibited a number of decrees rendered by the Chancery Court at Nashville in the case wherein the road in controversy was sold. But it will be seen from an examination of the transcript of the record of the case of *Railroad v. Hamblen County* (102 U. S.), which is appended hereto, that all the material and important decrees *were* before this Court in that case.

Post, page 52, *side page* 8.
Post, page 54, *side page* 13.

The method pursued to circumvent the decision of this Court in *Railroad v. Hamblen County* was this:

June 3d, 1884, or more than thirteen years after the sale and purchase (October 10th, 1871), the purchasers at the sale, Messrs. McGhee and Wilson, filed a petition in the original case at Nashville. But before stating the nature of that petition, it should be remarked that the case in the Chancery Court at Nashville wherein this road was sold was known as *The State of Tennessee v. The Edgefield and Kentucky Railroad Company and others.*

All the delinquent railroads in Tennessee—and there were many of them—were joined as defendants in that one case, and for the reason that the act directing the liens to be enforced provided that it should be done.

Acts Tenn., 1870–1, *Ch.* 23, *p.* 25.

The result was that, while the case was at an end as to many of the roads many years ago, as to some it had to be retained to collect purchase-money and the like.

So far as this road is concerned, the agreed case in *Railroad v. Hamblen County* acknowledges that all the purchase-money had been paid theretofore and proper conveyances then already made, and that agreement is dated April 16th, 1877.

Trans. Railroad v. Hamblen County, p. 18.
Appendix to this brief, post, p. 59.

This shows that so far as this railroad is concerned every thing (unless it may have been a decree of divestiture and vestiture in accordance with the decree

confirming the sale) had been done at least *seven* years before the "petition" was filed in the case.

The petition was filed by the purchasers, Wilson and McGhee. No one was made defendant, neither was any sort of process issued thereon. It states in substance that McGhee and Wilson in reality had bought the road for, and as the agents of, the appellee company; that it furnished the money to pay for it, and had been running the road as owner since November 14th, 1871; that no decree divesting and vesting title had ever been entered, and it prayed for a decree to be entered by "their (the petitioners) consent," to the end that the road might be decreed to the real purchaser, and that they might have a decree releasing them of all liability by reason of the execution of the bond signed by them for the purchase-money.

This petition was filed June 3d, 1884, and June 6th, 1884, the final decree was entered thereon. The appellee company was no party to that petition. Nevertheless the "decree" provided that it should be vested with all the rights, powers, and privileges of the Cincinnati, Cumberland Gap and Charleston Railroad Company, and all legal and equitable rights incident thereto, as defined by former decrees of the court in this cause, and for the period *prescribed by law.*

This "decree" vesting appellee with said privileges for the period *prescribed by law* is stated in the bill to be "a period of ninety-nine years from and after the year 1855." (*Trans.*, 20–1.)

With respect to this "petition" and "decree," we submit that in so far as they affect the rights of the State, the State should have had some sort of notice and an opportunity to defend. The case had for many years been at an end, so far as all questions in which the State had an interest were concerned, as the "decree" upon the petition shows. It recites on its face that the case wherein it was entered was "*lately* pending," the implication being that it was not pending when the decree was entered. If Mr. McGhee and Mr. Wilson desired to consent for a decree to be rendered against them in favor of the appellee, no one else had any right to complain; but, when under cover of that consent decree against them, important rights of the State were attempted to be adjudicated, there should have been notice as in the case of an original bill—for that is what it really was—so as to afford the State an opportunity to defend. It is apparent that *this* was what the petitioners shunned. The petition was filed June 3d, and three days thereafter there was entered a final decree.

But there is a saving clause in the decree itself. The privileges were decreed to be enjoyed for the period *prescribed by law*. Now, what was the period prescribed by law? It was no time at all. The Constitution forbid the granting of an immunity from taxation for any length of time; and, as a consequence, *that* was the period prescribed by law.

CONCLUSION.

The present case is nothing more than an attempt to evade the decision of this Court in *Railroad v. Hamblen County*, and escape from paying taxes to the State of Tennessee. Thus far the effort has been attended with success. But we now submit that upon more than one ground, as has already been shown, there is no good reason why this road should not be taxed like other property in Tennessee.

GEO. W. PICKLE,
Attorney-General of the State of Tennessee;

ALBERT S. MARKS,
JOHN J. VERTREES,
WILLIAM O. VERTREES,
Counsel for Appellant.

APPENDIX.

TRANSCRIPT OF THE RECORD IN THE CASE

—OF—

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

—VS.—

HAMBLEN COUNTY.

Filed October 24th, 1877, *decided at the October Term*, 1880, *and reported as Railroad v. Hamblen County in* 102 *U. S. Reports*, 278; *and by agreement made part of this Record, and re-printed herewith for convenience.*

See Transcript in P. P. Pickard, Comptroller of Tennessee, Appellee, v. East Tennessee, Virginia and Georgia Railroad Company, filed April 5th, 1886, *side page* 49, *for stipulation.*

TRANSCRIPT.

Transcript of the records of a cause brought by appeal of the plaintiff from the judgment of the Circuit Court of Hamblen County, and determined in the Supreme Court of Tennessee, at its September Term, 1877, at Knoxville, as follows, to wit: 1

CAPTION.

APRIL TERM, 1877.

STATE OF TENNESSEE,
COUNTY OF HAMBLEN:

Be it remembered, that at a regular term of the Circuit Court, begun and held for the county of Hamblen and State aforesaid, at the court-house in Morristown, on the third Monday of April, in the year of our Lord eighteen hundred and seventy-seven, it being the sixteenth day of said month, present and presiding the Hon. James G. Rose, Judge, etc., of the Second Judicial Circuit for said State, and who is assigned by law to hold said court, when and where the following proceedings were had and entered of record, to wit:

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY
v.
HAMBLEN COUNTY.
} *Agreed Case.*

BOND OF PLAINTIFF.

2 We acknowledge ourselves indebted to Hamblen County, the defendant in the above suit, in the sum of two hundred and fifty dollars, to be void on condition that the East Tennessee, Virginia and Georgia Railroad Company prosecutes an action in the form of an agreed case this day commenced against said Hamblen County in the Circuit Court of Hamblen County, with effect, or if payment of all costs and damages, incident on failure thereof, and pay all costs which may at any time be adjudged against them.

Witness our hands and seal this 16th day of April, 1877.

THE E. T., VA. & GA. R. R. Co.,
By R. M. BARTON, *Atto.*
ROB'T M. BARTON, *Security.*

(Endorsed:) Filed April 16th, 1877.
T. C. CAIN, *Clerk.*

BOND OF DEFENDANT.

We acknowledge ourselves indebted to the East Tennessee, Virginia and Georgia Railroad Company, the plaintiff in the above suit, in the sum of two hundred and fifty dollars, to be void on condition that the county of Hamblen defends an action pending in the form of an agreed case this day commenced by said East Tennessee, Virginia and Georgia Railroad Company, in the Circuit Court of Hamblen County, with effect, or if payment of all costs and damages incident on failure thereof, and pay all costs which may at any time be adjudged against them.

Witness our hand and seal this 16th day of April, 1877.

8 W. A. HOWELL,
Chairman for Hamblen County.

(Endorsed:) Filed April 16th, 1877.
T. C. CAIN, *Clerk.*

AGREED FACTS.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY
v.
HAMBLEN COUNTY.
} *Agreed Case.*

To the Hon. James G. Rose, Judge, etc., holding the Circuit Court for Hamblen County:

The plaintiff and defendants, for the purpose of securing the settlement of legal difficulties that have arisen between them, agree upon the following state of facts:

On the 18th of November, 1853, the Legislature granted to Wm. Houston, Hugh Graham, and others, and their associates who should become stockholders, a charter incorporating them a body corporate and politic, under the name and style of the Cincinnati, Cumberland Gap and Charleston Railroad Company, with succession for ninety-nine years, which charter is here referred to as a part of this agreed case, as published in the pamphlet Acts of 1853–4, pages 645 to 648, inclusive.

By the sixth section it is provided: "That whenever said company shall have completed that part of said road to Cumberland Gap to the East Tennessee and Virginia Railroad, or to the southern boundary line of the State of Tennessee, they shall have all the rights and privileges conferred by this charter for the period of ninety-nine years."

By the eighth section it is provided: "That said company shall be, and they are hereby vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except otherwise provided for in this charter."

The charter to which reference is here made as a part of the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company, was granted by the Legislature of Tennessee on the 9th of February, 1850, and is here referred to and made a part of this agreed case, as published in the pamphlet Acts of 1849–50, pages 239 to 254, inclusive.

By the fortieth section of said act it is enacted: "That the capital stock in said company, the dividends thereon, and the roads and fixtures, depots, work-shops, warehouses, and vehicles of transportation belonging to the company shall be forever exempt from the taxation in each and every of the said States of Tennessee and Kentucky; and it shall not be lawful for either of the said States, or any corporation or municipal police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on any such stock or dividends, property or estate: *Provided*, The stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with and at the same rate as money at interest or interest thereon; and when the State shall impose a tax on the dividends declared in favor of the stockholders of the company, the tax shall extend only to such proportion of the said dividends and capital stock as the part of the road in that State shall bear to the whole road, from the profits of which the said dividends have arisen, which tax, when imposed, shall be retained by the company out of the dividends, and paid to the State; but no tax shall be imposed so as to reduce the part of the dividends to be received by the stockholders below the legal interest of the State."

Under the charter so granted to Wm. Houston and others, stock was subscribed, and the Cincinnati, Cumberland Gap and Charleston Railroad Company was formed, the road surveyed and located, and that part of said road lying between Morristown, Hamblen County, and Wolfe Creek, in Cocke

County, built, ironed, and equipped, and for a time was run by said company, the Cincinnati, Cumberland Gap and Charleston Railroad Company. The road from 6
Wolfe Creek to the North Carolina line has not yet been built. To enable the company to build, iron, and equip said section, together with some masonry of the bridge of Holston, the company, under special acts of the Legislature of Tennessee, and under the General Internal Improvement Acts of 1852, borrowed from the State coupon bonds to the amount of $1,373,000, on which interest had accumulated, which said company was bound to, but did not pay, amounting on the 30th of January, 1871, to the sum of $284,198.52, making the sum due to the State on account of said loans on the 30th of January, 1871, one million six hundred and fifty-seven thousand one hundred and eighty dollars and fifty-two cents ($1,657,108.52), to secure the payment of which a lien was retained by the statutes authorizing said loans of bonds by the State upon all the property, real and personal, stock and franchises, of said railroad company. The company failing to pay the interest on said bonds, the Legislature passed a law giving to the Chancery Court at Nash- 7
ville jurisdiction of all questions arising upon said loans by the State to the various railroad companies in the State, which act, approved on the 22d of December, 1870, as well as the act approved July 5th, 1870, are here expressly referred to as a part of this agreed case. The bonds of the State were loaned to said Cincinnati, Cumberland Gap and Charleston Railroad Company, under the provisions of the General Internal Improvement Act of 1852 and the laws amendatory thereof, all of which are referred to and made a part of this agreed case.

On the 20th of July, 1871, the State of Tennessee filed a bill under the provisions of the Act of December 22d, 1870, in the Chancery Court at Nashville, against the Cincinnati, Cumberland Gap and Charleston Railroad Company, and the stockholders of said company (together with other rail-

road companies and stockholders and others), seeking to enforce the lien of the State and secure the payment of the interest due on said bonds, and the redemption and payment of the bonds. The jurisdiction of the Court was accepted, the rights of the parties ascertained by proper references, and, on hearing, the following decrees were pronounced, to wit:

THE STATE OF TENNESSEE
v.
THE EDGEFIELD AND KENTUCKY RAILROAD COMPANY, CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD COMPANY, AND OTHERS.

Be it remembered that on the 25th day of March,
8 1871, before the Hon. E. H. East, Chancellor, this cause came on to be heard as to the Cincinnati, Cumberland Gap and Charleston Railroad Company, upon the complainant's bill, and answer and demurrer of the defendant (the said Cincinnati, Cumberland Gap and Charleston Railroad Company), and judgment *pro confesso* entered against the stockholders and unknown creditors of said company, and all other persons made defendants to the bill who have not made defense, the said railroad company and its stockholders being represented by their solicitors; and it is agreed by the parties, by their solicitors, that the State of Tennessee has issued to the Cincinnati, Cumberland Gap and Charleston Railroad Company its coupon bonds to the amount of one million three hundred and seventy-three thousand dollars ($1,373,000.00) in aid of said company; that the State of Tennessee has funded the interest upon past-due coupons upon said bonds by issuing in aid of said company thirty-one thousand six hundred and eighty dollars of her bonds in funding said interest ($31,680.00), making the debt and prior lien of the State due from the Cincinnati, Cumberland Gap and Charleston Railroad Company one million four hundred and four thousand six hundred and eighty dollars ($1,404,680.00), and that the interest due to the State thereon to the

1st day of January, 1871, is the sum of two hundred and fifty-two thousand five hundred and twenty-eight dollars and fifty-two cents ($252,528.52), making the sum total due from the said defendant to the complainant, up to the 1st day of January, 1871, of one million six hundred and fifty-seven thousand one hundred and eight dollars and fifty-two cents ($1,657,108.52). The Cincinnati, Cumberland Gap and Charleston Railroad Company and its stockholders therein deny the right of the State of Tennessee to sell its road, property, franchises, and privileges until said bonds issued by the State fall due and payable; but by consent of parties it is agreed that said company is insolvent and unable to pay said debt due the State of Tennessee, or to pay interest due thereon and falling due; and it is further agreed that the State of Tennessee has a lien upon all the property and franchises of said company for said debt and interest; and said railroad company and its stockholders, believing that it is the interest of the State of Tennessee, said company, its stockholders, and all others interested in said railroad company, that it should be sold with all the franchises and privileges of said company, the said company and its stockholders, therefore, assent to a sale of the said railroad and all the property, real and personal, and right of way, and franchises and privileges of said company, and the interest of the stockholders and all other persons, their heirs, assigns, and successors, upon the condition that the purchaser thereof shall keep up, maintain, operate, and run said railroad as a public railroad, operated by steam-power in the same manner that the said road is now run and operated—that is to say, by at least one trip daily, Sunday excepted, each way over said road, by an engine and one or more passenger-cars, and such other cars as the transportation of freight or passengers offered on said road may require. And the right is hereby expressly reserved to the present stockholders of said company, or any one or more of them, to compel the execution of said condition and duties and obligations of such purchaser or purchasers, his or their

heirs, successors, or assigns, in regard to said obligations and deputations hereinbefore set forth.

And by consent it is further ordered and decreed by the Court that the Cincinnati, Cumberland Gap and Charleston Railroad Company, or any one or more of its stockholders, may purchase said railroad and the property, fran-
11 chises, and privileges of said company, within ninety days from the confirmation of the Master's report ordered by this decree, at the present minimum value of the said railroad and its franchises, payable in the legally issued bonds of the State of Tennessee or any issue of bonds, or to sell to other parties on the same terms and conditions, the bonds to be paid under the provisions and restrictions of the Act of December 21st, 1870. But because it does not appear to the Court what is the minimum value of the property and franchises of said company, payable in the bonds of the State, it is therefore by consent ordered and decreed by the Court that the Clerk and Master of the Court hear proof and report what is the fair and reasonable present minimum value of the property and franchises of the said Cincinnati, Cumberland Gap and Charleston Railroad Company payable in the bonds of the State of Tennessee, and also payable in cash, and make his report to this Court. But on suggestion of the complainant's counsel, and by consent, it is ordered and decreed that said sale and purchase, as above provided for and agreed to, shall not be at less minimum value than seven hundred thousand dollars ($700,000.00) in the bonds of the State of Tennessee, with the coupons attached from and after the 1st day of January, 1871; and by con-
12 sent it is further ordered and decreed by the Court that upon the confirmation of the Master's report, as the same may be modified by the Chancellor, if said railroad company, or its stockholders, or any one or more of them fail to purchase, or to sell to other parties, as herein heretofore agreed upon in this decree, within ninety days from said confirmation, at the minimum value of the said company's

road, property, franchises and privileges, as fixed by said report, and as modified by the Chancellor as to value, which shall not be less than seven hundred thousand dollars ($700,000.00) in the bonds of the State of Tennessee, then the Commissioners, on behalf of the State, may sell all the property and franchises of the Cincinnati, Cumberland Gap and Charleston Railroad Company to the best advantage, either at public or private sale, or, at their discretion, to sell the debt of the State against said railroad company.

And by consent it is further ordered and decreed by the Court that the rights of action that the said railroad company may have against any other company, or person or persons, is hereby reserved to the said Cincinnati, Cumberland Gap and Charleston Railroad Company.

And by consent it is further ordered and decreed by the Court that the costs of making respondent a party defendant in this cause, and all the cost incident to this proceeding as to respondent, shall be paid out of the proceeds of the sale of defendant's road.

THE STATE OF TENNESSEE
v.
THE EDGEFIELD AND KENTUCKY RAILROAD COMPANY, CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD COMPANY, AND OTHERS.

Be it remembered that on the 8th day of April, 1871, before the Hon. E. H. East, Chancellor, this cause came on for final hearing as to the defendant, the Cincinnati, Cumberland Gap and Charleston Railroad Company, its stockholders, and all other persons made defendants, upon the report of the Clerk and Master, made in obedience to a former decree in this cause, and the exceptions thereto filed by the solicitors of the defendant, the Cincinnati, Cumberland Gap

and Charleston Railroad Company, which report is in the following words and figures, to wit:

(Without copying the report of the Clerk and Master entire, it is sufficient to state that the report showed that he had taken the depositions of witnesses, as directed in the foregoing decree, as the basis of his report, from which he reports that the reasonable present minimum value of the property and franchises of the Cincinnati, Cumberland Gap and Charleston Railroad Company was $700,000.00 in the bonds of the State of Tennessee, and $448,000.00 as
14 its minimum cash value. To this report the company's solicitors filed exceptions, but the exceptions were overruled, and the report confirmed, as appears from the following, which is the action of the Court in the premises:)

And after argument of counsel, and mature consideration of the Court, it is ordered, adjudged, and decreed by the Court that said exceptions be overruled, and the said report of the Clerk and Master be, in all things, confirmed, fixing the minimum value of the Cincinnati, Cumberland Gap and Charleston Railroad, with its irons, equipments, right of way, real and personal property, franchises and privileges of the Cincinnati, Cumberland Gap and Charleston Railroad Company, at seven hundred thousand dollars ($700,000.00), payable in the bonds of the State of Tennessee, with the coupons attached of and after the 1st day of January, 1871, the Chancellor being of the opinion from said report that the present minimum value of the same in cash is four hundred and forty-eight thousand dollars ($448,000.00), and in bonds of the State, with coupons attached as aforesaid, is seven hundred thousand dollars ($700,000.00). The Court therefore so ordered, adjudged, and decreed. And it is further
15 ordered, adjudged, and decreed by the Court that the defendant, the Cincinnati, Cumberland Gap and Charleston Railroad Company, or any one or more of the

stockholders, shall have the privilege for ninety days from the date of this decree of purchasing the said railroad and all the property, real, personal, and mixed, and the franchises and privileges of said railroad company, for seven hundred thousand dollars, payable in the bonds of the State of Tennessee, with the coupons attached of and after the 1st day of January, 1871, or selling the same to other parties within said ninety days for the like amount in bonds, with said coupons attached, as provided for in the consent decree in this cause, and under the terms, conditions, restrictions, and liabilities contained in said decree. And if said company fail to make said purchase, or any one or more of its stockholders fail to purchase as aforesaid, and if said company fail to sell to other parties as aforesaid within ninety days from this date as aforesaid, and under the conditions, liabilities, and restrictions as aforesaid, which are fully set forth in said former decree, then the Commissioners of the State "may sell as directed in said former decree." Upon which the Commissioners appointed for the sale of delinquent railroads having offered said road, property, and fran- 16
chises for sale, and no bid being made for the Cincinnati, Cumberland Gap and Charleston Road, except the bid of C. M. McGhee for himself, R. T. Wilson and associates, which bid was in the words and figures following, to wit:

"*To the Commissioners for the Sale of Delinquent Railroads for the State of Tennessee:*

"I hereby propose, upon the part of myself, R. T. Wilson, and associates, to pay ($300,000) three hundred thousand dollars in bonds of the State of Tennessee, with January (1871) coupons attached, for the Morristown, or Cincinnati, Cumberland Gap and Charleston Railroad. For and in consideration I expect a full and perfect title to the road, including the State's interest, franchises, and privileges. I will, within a few days, pay one-fourth of the amount and execute proper bonds for deferred payments; I will require sufficient

time to allow the bonds for the first payment to be sent me from New York. Yours respectfully,

"C. M. McGHEE.

"*Nashville, October* 10*th*, 1871.

"C. M. McGHEE."

Which proposition of purchase was accepted by the Commissioners in the following words and figures, to wit:

"NASHVILLE, Oct. 10, 1871.

"The Commissioners accept the proposition of C. M. McGhee and R. T. Wilson & Co., provided the same will
17 be complied with in ten days. By order of the board.

"ED. R. PENNEBAKER,

"*Secretary Board of Commissioners.*"

A sufficient bond was executed by C. M. McGhee, R. T. Wilson, Jo. Jaques, and R. C. Jackson. This sale was reported by the Commissioners to the Court, and was on the 19th day of October confirmed by the Court by decree, in the words following, to-wit:

* * * "which report being seen, heard, and fully understood by the Court, and not excepted to, is in all things confirmed; and it appearing to the satisfaction of the Court that the sales of the Knoxville and Kentucky, and the Cincinnati, Cumberland Gap and Charleston Railroad, with their property and franchises, have been made by the Commissioners in conformity with the previous decrees, it is therefore ordered, adjudged, and decreed that these said sales be confirmed, and that the Commissioners retain the bonds and collect the residue of the purchase-money as the same falls due, and, when the same is fully paid, make title to the purchasers according to the terms of the contract and former decrees of this court. It is further ordered and decreed by the Court that the purchaser be at once put in possession of these roads, severally bought by them, with all the prop-

erty, franchises, and effects so bought by them as aforesaid, and for this purpose, if necessary, the Clerk and Master is hereby ordered and directed, upon the application of either of said purchasers, to issue a writ of possession, or writs of possession, directed to the sheriff of the several counties in this State through which the roads may run, or in which any part thereof, or of the property sold may be, directing said sheriff to put the purchasers in possession of such property at once, and make return of his action to this court. It is further ordered, adjudged, and decreed that all the acts of the Commissioners in reference to to said sales be, and the same are hereby approved, sanctioned, and ratified by the Court." * * * * *

The purchase-money has all been paid to the State, and proper conveyances made according to the terms of contract and decrees of court hereinbefore cited. The purchasers, C. M. McGhee and R. T. Wilson, have sold and by proper conveyances conveyed said railroad property, stock, and franchises so purchased by them to the plaintiff, The East Tennessee, Virginia and Georgia Railroad Company, and they are now the owners thereof, and are keeping up said road and running it as a railroad, as common carriers of freight, passengers, and the public mails. The section of road from Wolfe Creek to the North Carolina line has not yet been completed, so that neither the Cincinnati, Cumberland Gap and Charleston Railroad Company nor the present owners have completed the road from the intersection with the East Tennessee, Virginia and Georgia Railroad (formerly the East Tennessee and Virginia Railroad) to Cumberland Gap, or to North Carolina line, lacking four miles of reaching the line; nor has any material part of the road north of Morristown been built. The distance of road really completed and now used by the plaintiff as a railroad is about forty miles. The plaintiff, owning and operating the line of railroad from Chattanooga to Bristol under their charter, have accepted the terms tendered by the Act of

1875, Ch. —, approved March 24th, 1875, and make the return of gross earnings, upon which the plaintiff pays one and one-half per cent., as provided in said statute, in lieu of all other taxes. But in this return the plaintiff does not include the receipts upon the Cincinnati, Cumberland Gap and Charleston Railroad, as the plaintiff operates and runs that road under the charter which they purchased as aforesaid, as a separate and distinct road. Under their charter so purchased the plaintiff did not report to the Comptroller, in pursuance of the provisions of the Act of 1875, Chapter 78, which is here made a part of this agreed case, as published in the pamphlet Acts, pages 100 to 105, inclusive. Under the provisions of said act the Governor appointed John Helms, —— ——, Commissioners, who in the discharge of their duties assessed the value of the Cincinnati, Cumberland Gap and Charleston Railroad from Morristown to Wolfe Creek, in Cocke County, at the sum of $200,000, being the sum of $5,000 per mile, and showed in their report that eight miles of said road lie in Hamblen County, making the assessed value of the road, or that part that lies in Hamblen County, to be the sum of $40,000, which the Comptroller certified to the Clerk of the County Court of Hamblen County, as required by said act, and under the provisions of the act the Clerk of the County Court upon such assessed value fixed the amount of the county tax as laid by the court, ascertaining and fixing the amount of said tax at the sum of $280.00.

By the seventeenth section of the act incorporating the Louisville and Nashville Railroad Company, the said company is allowed, among other charges, to charge as follows: * * "The charge for transportation for heavy articles shall not exceed thirty-five cents per hundred pounds for every 100 miles." This fixes the maximum rate to be charged on this road for the transportation of "heavy articles." The distance between Morristown and Wolfe Creek, the termini of this road, is forty miles. The charge for the transportation

of heavy articles between these points or termini has never been as low as fourteen cents per hundred pounds.
It is agreed that there are eight miles of said road lying 21
in said county of Hamblen, and that the valuation per
mile is not excessive, and that for said year 1875 the county tax for Hamblen County was fixed at seven mills on the dollar. We agree that the time allowed the Cincinnati, Cumberland Gap and Charleston Railroad Company by the terms of its charter, and all amendments thereto, in which to complete said road, had expired prior to the passage of the Act of 1875, taxing railroads, and before the filing of the bill for the sale of the road and franchises under the provisions of the Acts of December 2d, 1870, and July 5th, 1870, before referred to. No steps have been taken or proceedings instituted by the State by *quo warranto* or *scire facias* to annul and declare void the charter and franchises of the Cincinnati, Cumberland Gap and Charleston Railroad Company, so sold by the State and purchased by McGhee, Wilson, etc., the vendors of this plaintiff. It is further agreed that the terminus of the road at Wolfe Creek is the nearest connecting point to the terminus at the State line, at which a connection with the stage line or road can be made, and that at present there is no railroad constructed in North Carolina connecting with the plaintiff's road at the State line. All facts stated in the foregoing agreement we agree upon as true, reserving
to each party the right to object to any fact stated as 22
not relevant to the issues presented that would, by the
laws of evidence, be available if the same were presented by proof, oral or written, on a regular trial.

The plaintiff, the East Tennessee, Virginia and Georgia Railroad Company, claim and maintain before the Court that, as the State, in the enforcement of her mortgage lien created by statute, in her own courts, had procured to be sold, and did, through her legally appointed Commissioners, sell to the plaintiff's vendors the road, rolling-stock, equipments, property, and franchises of the Cincinnati, Cumberland Gap and

Charleston Railroad Company all the rights and privileges conferred by the charter upon said railroad company, including the exemption from taxation by the State, counties, and municipal corporations, the plaintiff holds said property exempt from all taxes, and that the Act of 1875, Chapter 78, above mentioned, did not authorize said Commissioners to make any assessment of said road and property, and the plaintiff is not bound to pay said tax; nor is the plaintiff's property liable to be assessed for taxes under the laws of Tennessee, all acts of the Legislature assuming the right to tax said property being unconstitutional.

23 And the defendants, the justices of Hamblen County, maintain and aver that the "immunity" from taxation was a privilege or "immunity" conferred upon the Cincinnati, Cumberland Gap and Charleston Railroad Company, coupled with a condition precedent, and to be enjoyed by it only upon compliance with that condition, which was the completion of its road from Cumberland Gap to the East Tennessee and Virginia Railroad, or to Paint Rock, and that since neither said company, the present plaintiff, or its vendors have complied with said condition, they are not entitled to the exemption. They maintain that another condition imposed upon said railroad company was that it should not charge higher rates of freight on heavy articles than thirty-five cents per hundred pounds per hundred miles; that the plaintiffs and their predecessors in ownership of this road have uniformly charged a higher rate than this on such articles, and have therefore forfeited any right to the enjoyment of this immunity. They maintain that the Legislature of Tennessee is not, and was not, authorized by the Constitution of 1834 to exempt this species of property from taxation, and that for these reasons they ought not to be inhibited from collecting taxes from plaintiff.

We agree that the costs of the cause shall abide the decision of the Court. If the Court is of opinion that the plain-

tiff is not liable for the tax, judgment shall be entered for costs against the county of Hamblen, and a prohibition against further efforts to collect the tax. If the Court 24
is of opinion that the company is liable for the taxes, judgment shall be entered for the $280 and the costs in favor of the county against the company.

THE E. T., VA. & GA. R. R. Co.,
By ROB'T M. BARTON, *Counsel and Attorney.*
THE JUSTICES OF HAMBLEN COUNTY,
By J. C. HODGES, *Attorney.*

The foregoing is a true and *bona fide* case, the facts of which are agreed upon for the purpose of determining a real controversy and settling the rights of the parties.

ROB'T M. BARTON,
Attorney for E. T., V. & Ga. R. R. Co.
W. A. HOWELL,
Chairman of the Court of Hamblen County.

Sworn to and subscribed before me this April 16th, 1877.
T. C. CAIN, *Clerk.*

(Indorsed:) Filed April 16th, 1877.
T. C. CAIN, *Clerk.*

SATURDAY, April 21st, 1877.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY
v.
HAMBLEN COUNTY.
} *Agreed Case.*

This case being reached upon the docket for trial, the agreed state of facts was submitted to the Court, and the Court, not being fully advised in the premises, is pleased to hold the case under advisement until the next term of this Court.

25 STATE OF TENNESSEE,
HAMBLEN COUNTY:

Be it remembered that at a regular term of the Circuit Court, begun and held for the county of Hamblen and State aforesaid, at the court-house in the town of Morristown, on the third Monday of August, in the year of our Lord eighteen hundred and seventy-seven, it being the twentieth day of said month, present and presiding the Hon. John A. McKenney, Judge, etc., of the First Judicial Circuit, presiding by interchange with the Hon. J. G. Rose, Judge, etc., of the Second Judicial Circuit of said State, when and where the following proceedings were had and entered of record, to wit:

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY
v.
HAMBLEN COUNTY.
} *Agreed Case.*

In this case, which was submitted to the Honorable Court at last April term, and argued by counsel and held under advisement, Hon. James G. Rose being upon the bench, presiding for this purpose, delivered his opinion, which is in the words and figures following:

26 The Cincinnati, Cumberland Gap and Charleston Railroad Company was chartered by Act passed November 18th, 1853. (*Acts* 1853–4, *Ch.* 301, *p.* 645.) The eighth section provides: "That said company shall be, and they are hereby vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except where otherwise provided for in this charter." Plaintiff insists that this eighth section has reference to an existing charter, and that the fortieth section thereof exempts the corporate property, capital stock, etc., of the company from taxation, which

is thus made a part of the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company. (*Acts* 1849–50, *Ch.* 76, *pp.* 239–254.) The statute last referred to was passed by the Legislature of Tennessee February 9th, 1850, looking to the connection of Nashville and Louisville by rail. The fifty-first section of this act provides:

"That this act shall become a law whenever the State of Kentucky may enact the same, for the same purpose, with such modifications and amendments as they may deem right, not inconsistent with the provisions hereof," etc.

It is apparent from this, the closing section of the Act of February 9th, 1850, that the act did not, nor was it intended to take effect immediately. It was expressly 27
provided, on the face of the act itself, that it was not to become a law until the "State of Kentucky enacted the same for the same purpose," without material modifications. The operation of the act in Tennessee was made to depend on its adoption in Kentucky. Now, was this Tennessee charter adopted in Kentucky? Our legislation, reported cases, and legal history show that it was not. The Kentucky Legislature, on March 5th, 1850, passed a charter of its own for the contemplated railroad, differing most materially from the Tennessee charter. Under the Tennessee act, the style of the company was to be the Nashville and Louisville Railroad Company, was to have succession for ninety-nine years, and its capital stock and property was to be exempt (fortieth section) from taxation. Under the Kentucky act, the style of the company was to be the Louisville and Nashville Railroad Company, was to have succession for nine hundred and ninety-nine years, and its property was not exempt from taxation. These were very material differences. The Kentucky act contained provisions wholly inconsistent with the
Tennessee act; and the Legislature of Tennessee, rec- 28
ognizing this fact, passed a statute adopting the Kentucky charter in this State, granting right of way, etc. (*Acts*

1851–52, *Ch.* 23, *pp.* 28, 29.) This latter statute is a legislative abandonment of the charter granted at its prior session. It is a part of our legal history that the company was organized under the Kentucky charter, which contains no exemption from taxation. (*See Louisville and Nashville Railroad Company v. The State of Tennessee et al.*, 8 *Heis.*, 663.) The conclusion reached in that case is that the property of that company is taxable. Now, the eighth section of the Cincinnati, Cumberland Gap and Charleston Railroad Company provides that that company shall be vested with all the rights, powers, and privileges of the Nashville and Louisville Railroad Company. To what does this eighth section refer? The agreed case states that it refers to the Tennessee act above mentioned, passed February 9th, 1850. If it refers to the Kentucky charter, under which the road was built and now operated, it would not avail plaintiff in this case, as that charter contains no exemptions from taxation (8 *Heis.*, *p.* 663); but if it refers to the Tennessee act, passed February 9th, 1850, does it leave the plaintiff in any better situation? The Tennessee act was only a proposed charter; it was tendered to a company as a charter on certain conditions; it was to take effect and become a law on a certain event. But no company ever accepted it or organized under it; the event on which it was to become a law never took place. There is not, and never was in this State, a "Nashville and Louisville Railroad Company;" hence, the eighth section in question, in referring in terms to the Nashville and Louisville Railroad Company, refers to a company that never existed in fact, was never organized, and therefore never possessed any such supposed "rights, powers, and privileges" as is assumed in said eighth section.

It is insisted, however, that the said eighth section has the legal effect to vitalize the Act of February 9th, 1850, and to confer the rights, powers, and privileges therein enumerated on the Cincinnati, Cumberland Gap and Charleston Railroad Company. I do not assent to this view. The Act of Febru-

ary 9th, 1850, *proprio vigore*, never took effect as a statute; no company ever accepted it; the Legislature abandoned it and granted a different charter, and that before 80
the enactment of the said eighth section in question.
If the said eighth section had, in terms and by apt words, conferred on the Cincinnati, Cumberland Gap and Charleston Railroad Company "all the rights, powers, and privileges mentioned in an act passed February 9th, 1850, entitled An Act to Incorporate the Nashville and Louisville Railroad Company," or if it had used words of equivalent import, it would have been sufficient. But it does nothing of the kind. It does not, in terms, refer to any statute. It assumes the existence of a railroad company which never existed; it assumes that such company possessed certain rights, powers, and privileges, which, for want of existence in fact, it could not possess; it further assumes that such railroad company derived said rights, powers, and privileges from a supposed charter, which in fact never went into force as a statute. I am, therefore, of opinion that judgment on 81
the case agreed should be rendered for the defendant, unless the Court is concluded by an admission of defendant.

The agreed case substantially admits that the fortieth section of the Act of February 9th, 1850, is a part of the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company. But, in my view, the said Act of February 9th, 1850, never had the force of law; and, if so, the said fortieth section is no part of the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company, and never was. Then, if the parties have admitted as law that which the Court deems not to *be* law, is the Court bound to adjudge according to the erroneous admission? I think not. Consent of parties cannot make or change the law. It is the province of an agreed case to state facts only, leaving the Court untrammelled as to all questions of law.

This conclusion reached renders it unnecessary to consider the other questions discussed in argument and raised by the agreed case.

Judgment for defendant for taxes and costs.

JAMES G. ROSE, *Judge, etc.*

It is therefore considered by the Court that Hamblen County recover of plaintiff, the East Tennessee, Virginia and Georgia Railroad Company, the sum of two hundred
32 and eighty dollars, the taxes assessed in favor of said Hamblen County for the year 1875, with the costs of this cause, for which let execution issue. To which findings and judgment of the Court the plaintiff excepts in law, and prays an appeal to the next term of the Supreme Court of Tennessee, to be holden at Knoxville on the second Monday in September, 1877, which appeal is granted upon the plaintiff giving bond as required by law, which is done.

APPEAL BOND.

We, the East Tennessee, Virginia and Georgia Railroad Company and Robert M. Barton, their security, acknowledge ourselves indebted to Hamblen County in the sum of two hundred and fifty dollars. But the conditions of this obligation is such that whereas Hamblen County recovered a judgment against the said railroad company in the Circuit Court of Hamblen County, on the 21st day of August, 1877, for the sum of two hundred and eighty dollars and cost, and from which said judgment said railroad company pray
33 an appeal to the next term of the Supreme Court, to be held at Knoxville, Tenn.

Now, if the said railroad company shall prosecute said appeal successfully, or abide by and perform the judgment of

the Supreme Court in the premises, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands this August 21st, 1877.

THE E. T., VA. & GA. R. R. Co.,
By R. M. BARTON, *Attorney.*
R. M. BARTON, *Secretary.*

(Indorsed:) Filed August 21st, 1877.
T. C. CAIN, *Clerk.*

Bill of cost:

State and county tax.....	$ 10 00
Clerk, T. C. Cain, for ent. and no. cause, 25; 4 dockets, 40; filing agreement, 25; taking and filing 2 pros. bonds, 50; taking affidavit, etc., 25; 1 continuance, 25; for copying opinion in record book, 1,000 words, $1.00; judgment, 75; judgment for cost, 25; entry of appeal, etc., 75; filing appeal bond, etc., 25; taxing bill cost, 50; transcript, 7,000 words, $7.00; postage, 15; certif. and seal, 75,	13 40
	$ 23 40
34	$ 23 40
Judgment for deft., August 21st, 1877	280 00
	$ 303 40

STATE OF TENNESSEE,
HAMBLEN COUNTY.

I, T. C. Cain, Clerk of the Circuit Court for said County of Hamblen, and State aforesaid, hereby certify that the foregoing thirty-six pages of words and figures comprise an entire and perfect transcript of the record and bill of costs remaining in my office in the case wherein The East Tennessee, Virginia and Georgia Railroad Company is plaintiff, and the County of Hamblen defendant.

Witness my hand and seal of office, at office in Morristown, this September 7th, 1877.

T. C. CAIN, *Clerk.*
By GEO. S. CROUCH, *D. C.*

OPINION.

PROCEEDINGS IN THE SUPREME COURT.

THE EAST TENN., VA. & GA. R. R. CO., IN ERROR,
v.
HAMBLEN COUNTY.

35 This case was submitted to the Circuit Court of Hamblen County upon an agreed state of facts, and involves the question whether the railroad extending from Morristown to Wolfe Creek is subject to taxation. The entire road, with its franchises, was purchased by the present owner under a sale made by virtue of proceedings had in the Chancery Court at Nashville for the sale of delinquent railroads; and it is claimed that the entire road, with its appurtenances, etc., was exempt from taxation in the hands of the original company, and that the exemption still attaches to the property in the hands of the present owner.

The road was originally constructed and owned by a corporation styled "The Cincinnati, Cumberland Gap and Charleston Railroad Company." The charter of this company was granted by act of the Legislature of the 18th November, 1853. Previously, on the 9th February, 1850, the Legislature had passed an act chartering the Nashville and Louisville Railroad Company, and by the fortieth sec-
36 tion it is provided that the capital stock, dividends, roads, fixtures, etc., depots, work-shops, warehouses, and vehicles of transportation should be exempt from taxation, with certain provisos not important now to consider. The eighth section of the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company provides: "That said company shall be, and they are hereby vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except otherwise provided for in this charter." It is by virtue of this section that the exemption

is claimed, and the question is whether the exemption granted to the Nashville and Louisville Company was granted to the Cincinnati, Cumberland Gap and Charleston Company by the language vesting said latter company with "all the rights, powers, and privileges" of the former.

There can be no question, if we adopt a liberal construction, that an exemption from taxation might be included under the terms "rights or privileges;" but it is a settled and uniform rule of construction, according to all the
authorities, that no exemption from taxation can be 87
allowed unless it be granted in plain and unambiguous terms; every presumption and intendment is against it, and every doubt in the language used is to be resolved against the exemption; bearing this in mind, it results that the grant of the "rights, powers, and privileges" of the Nashville and Louisville Railroad Company did not carry with it the immunity or exemption from taxation granted to that company; full meaning may be given to the words "rights, powers, and privileges," without including the exemption. This view is strengthened by the language used in the eighth section of Art. XI. of the Constitution, by which the Legislature is forbidden to pass any law granting to any individuals rights, privileges, immunities, or exemptions, other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law. The use of all these terms indicates that a separate meaning is attached to each, or at any
rate that "rights and privileges" do not necessarily 88
include immunities and exemptions in the sense in which the framers of the Constitution used the terms. The exemption in this case, not having been granted in explicit and unequivocal terms, cannot be allowed.

We place our decision of the case upon this ground without noticing other questions.

The judgment will be affirmed.

McFarland, J.

DECREE.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,
v.
HAMBLEN COUNTY.

This cause coming on to be heard on the transcript of the record from the Circuit Court of Hamblen County, and the cause being heard and argument had, and it appearing to the Court that there is no error in the record and judgment of the court below, the judgment is affirmed. It is
39 therefore considered by the Court that the county of Hamblen recover of the plaintiffs the sum of $280.00, the taxes assessed in favor of Hamblen County for the year 1875, together with interest thereon from the date of the judgment in the Circuit Court to this day, being one dollar and eighty-six cents, making the sum of $281.86. It is further considered by the Court that the defendant recover of the plaintiff and Robert M. Barton, the security in the prosecution and appeal bonds, the costs in the cause in this court and the court below, for which execution will issue.

FILED
APR 10 1889
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 246.

P. P. PICKARD, COMPTROLLER, &c.,

vs.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

WM. M. BAXTER,
Solicitor for Appellee.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 246.

P. P. PICKARD, COMPTROLLER, &c.,

vs.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

FACTS.

In November, 1853, the State of Tennessee passed an act incorporating certain persons named, in these words:

* * * "are *hereby* declared to be a body corporate and "politic under the laws of Tennessee, with succession for "ninety-nine years," &c.

Acts 1853, page 645.

By the eighth section of said act it is enacted "that said "company shall be, and they are *hereby, vested* with all the "rights, powers, and privileges and subject to all the re- "strictions and liabilities of the Nashville and Louisville "Railroad Company, *except otherwise provided for in this* "*charter.*"

The ninth section of the act authorizes the company to

increase its capital stock to an amount sufficient to complete its road, to borrow money, to issue bonds, and mortgage its property, &c.

The fortieth section of the act authorizing the incorporation of the Nashville and Louisville Railroad Company provides "that the capital stock in said company, the divi- "dends thereon, and the roads, fixtures, depots, workshops, "warehouses, and vehicles of transportation belonging to "the said company *shall be forever exempt from taxation*," &c.

By an amendatory act passed in December, 1853, it is enacted that "said Cincinnati, Cumberland Gap and Charles- "ton Railroad Company shall be, and *they are hereby*, vested "with all the rights, powers, and privileges and subject to all "the restrictions and liabilities of the East Tennessee and "Virginia Railroad Company, EXCEPT *otherwise provided in* "*this act, and the act this is intended to amend.*"

Acts 1853, pages 763–'4.

The incorporators or any two of them were authorized to open books *at any time* and place to receive subscriptions, &c.

Acts 1853, page 763.

In 1856 the charter was again amended as follows:

* * * "that whenever said railroad company shall "have subscribed in *bona fide* stock an amount sufficient to "grade said railroad from or NEAR Paint Rock, the southern "boundary line of the State, to its intersection with the "East Tennessee and Virginia railroad at Morristown, * "* * they shall have all the rights, powers, and privileges "conferred by the charter for the period of *ninety-nine years*,

" and *shall be entitled to all the benefits of State aid* granted to " said road by existing laws.

Acts 1856, page 55.

In 1869 the following act was passed:

" That the first section of an act passed February 11th, " 1852, entitled "An act to establish a system of internal im- " provement in this State," and subsequent acts extending " the provisions of said act to the Cincinnati, Cumberland " Gap and Charleston Railroad Company, be so amended " that whenever said railroad company shall have graded " and shall have ready to put down the necessary timbers " for the reception of rails, as is contemplated in said acts, " from Morristown to the French Broad river, and when- " ever stock is subscribed sufficient to grade the whole line " of said road from Morristown to Paint Rock, at the North " Carolina line, *it shall be the duty of the Governor* to issue " bonds of the State to the company as required in said acts."

Acts 1859–'60, page 171.

Bonds were issued, and afterwards the State filed its bill to foreclose its lien, in which bill it set forth all the foregoing *acts as constituting a part of the charter of said company.*

McGhee and Wilson purchased the property, franchises, and privileges, and the sale was confirmed, and by their consent (the attorney for the State being present and admitting that the purchase-money had been fully paid) the title was vested in the East Tennessee, Virginia and Georgia Railroad Company.

See Transcript, page 20.

ARGUMENT.

1. The Cincinnati, Cumberland Gap and Charleston Railroad Company, by its charter, had an exemption from taxation, and the State is estopped to deny it.

2. The exemption passed by the sale made by the State to foreclose its lien, and is now owned by the appellee.

3. The case of Hamblen County *vs.* East Tennessee, Virginia and Georgia Railroad Company (102 U. S., 273), is not an adjudication which estops the appellee.

1.

To construe the original act of incorporation of the Cincinnati, Cumberland Gap and Charleston Railroad Company as appellant's counsel construes it, convicts the General Assembly of idiocy. The most cursory reading of the act of November 10th, 1853, incorporating the Cincinnati, Cumberland Gap and Charleston Railroad Company, discloses the fact that the Legislature was providing simply for a *link* in a road to be constructed from Cincinnati, Ohio, to Charleston, South Carolina, through Kentucky, Tennessee, North Carolina, and South Carolina; that this link was to be immediately organized as a *Tennessee* corporation, with power to consolidate with other corporations created by adjoining States to build links in the proposed roads. When the Cincinnati, Cumberland Gap and Charleston Railroad Company is given all the rights, powers, and privileges of the Nashville and Louisville Railroad Company the construction should be the same as if the

Legislature had added, "that is to say (here insert the powers, rights, and privileges of the Nashville and Louisville Railroad Company);" and *this* grant is coupled with these further words, "*except otherwise provided for in this charter.*"

If any provision limits the enjoyment or possession of these rights, powers, and privileges, it is the sixth section of its own charter, which provides that "whenever said company "shall have completed that part of said road from Cumber- "land Gap to the East Tennessee and Virginia Railroad, or "to the southern boundary line of the State of Tennessee, "they shall have all the rights and privileges conferred by "this charter for the period of ninety-nine years."

This evidences a clear intention that the Legislature never meant that no powers, rights, or privileges should pass nor should the law take effect only and when the State of Kentucky passed the same law as a charter for the Cincinnati, Cumberland Gap and Charleston Railroad Company in Kentucky. The construction contended for seems to me to be not only untenable, but absurd.

Let us assume for the present that the 6th section of the charter controls, and that the exemption attached only when a certain part of the road was *completed*, as is contended for by counsel for appellant. If this position be tenable, it demonstrates the weakness of the other. They are utterly inconsistent, and cannot stand together. Naturally the last expression of the Legislature would be the controlling one, as evidencing their intention. In the act *authorizing the formation* of the Nashville and Louisville Railroad Company it is provided that the same was to *become a law* (*i. e.*, that certain powers, rights, and privileges were to become vested) "whenever the State of Kentucky may enact the same."

In the act *incorporating* the Cincinnati, Cumberland Gap and Charleston Railroad Company the same certain powers, rights, and privileges were to vest whenever a certain part of its road was *completed.*

The possession and enjoyment of such certain rights, powers, and privileges did not therefore in any way depend upon whether the State of Kentucky enacted the act of November 10, 1853, but at the time of the passage of the act of November 10, 1853, it depended only upon the *completion* of a certain part of its road.

This condition, however, was afterwards changed by the Legislature and made more favorable.

In 1856 the charter was amended so as to provide that "whenever said railroad company shall have subscribed in "*bona fide* stock an amount sufficient to grade said railroad "from or *near* Paint Rock, the southern boundary line of the "State, to its intersection with the East Tennessee and Vir-"ginia railroad at Morristown * * * they shall have "all the rights, powers, and privileges conferred by this "charter for the period of ninety-nine years," &c.

Completion is no longer required, but only a sufficient amount of *bona fide* stock subscribed to *grade* a certain portion of the road.

This operates as a repeal of all former conditions or restrictions or requirements.

The exemption from taxation is clear and unequivocal; the condition entitling the company to it equally so. If the condition was met the exemption vested. I understand appellant's counsel to concede as much; but they say the road was never *completed*, nor was the *bona fide* stock ever *subscribed.* The question, then, is one of fact. It may be

there is no sworn proof in this record of the fact of the *bona fide* stock required by the act to be subscribed, but I insist that the State is estopped to deny the fact as against the purchaser.

The act just last quoted from vests the exemption from taxation whenever the required amount of *bona fide* stock is subscribed, and at the *same time* and by reason of the *same fact* entitles the company to *State aid.*

The act of 1859 hereinbefore referred to makes it the duty of the Governor to issue the bonds whenever a sufficient amount of *bona fide* stock has been subscribed as will grade the whole line from Morristown to Paint Rock.

Under these acts the Governor did issue the bonds, and afterwards the State, by its bill to foreclose its lien, ratified the act of its Governor, and thereby ADMITTED that the Cincinnati, Cumberland Gap and Charleston Railroad Company did have (prior to the issuance of said bonds) the necessary amount of *bona fide* subscription to its capital stock which entitled it to State aid and which vested in it the exemption from taxation.

Having sold this privilege or exemption (which was *property*), the State is now estopped, as against the purchaser, from now claiming that the exemption never vested in the railroad company, because there is no sworn proof in *this* record that the required amount of *bona fide* stock was ever subscribed. The denial in the answer of respondent in this cause is by way of avoidance. There is no evidence to sustain it. On the other hand, the Governor's act in issuing the bonds and the State's act in foreclosing its lien are evidence of a full compliance of every condition required of the railroad company to entitle it to the exemption claimed.

2.

The exemption being property already in existence, and being one of the "privileges" of the railroad company which would give value to its railroad in the hands of a subsequent owner, the Legislature had the right to provide for a sale of the railroad with the incident attached. The property was *already exempt*, and it was merely to retain that quality after sale as before. I can add nothing to what the learned circuit judge says upon this point in deciding the case below. I gladly adopt his language, and avail myself of his reasoning.

24 Fed. Rep., 616.
24 Fed. Rep., 620–624.
9th Baxter, 442.
12th Lea, 584.
2d Pickle, 440.

The word "privileges" carries with it an exemption from taxation.

117 U. S., 145, and cases cited.

This Court will follow the decision of the State court upon question of what was sold and transferred by decrees in case of "State, &c., *vs.* Edgefield & Kentucky Railroad Company *et als.*"

107 U. S., 33–34.
109 U. S., 255–256.
125 U. S., 582–583.

3.

There is no *res adjudicata*. The cause of action is not the

same as in the case of Hamblen County *vs.* East Tennessee, Virginia and Georgia Railroad Company (102 U. S.). The taxes claimed in that case were for same year, 1877, claimed by Hamblen county. In the present case the demand is for State taxes for the years 1883 and 1884. Hamblen county derives its right to tax from the State, to be sure; but the State does not derive its right from Hamblen county. Whatever would bind the State would likewise bind Hamblen county, because it derives its rights under or through the State. But is the converse of the proposition true? Would the State be bound by a judgment against Hamblen county's right to levy and collect taxes?

I should say it would not be bound. If so, then the State is a stranger to the judgment, and it cannot be pleaded or relied upon as an estoppel. The principle is fundamental, that all estoppels must be *mutual*.

Herr. on Estoppel and *Res Adjudicata*, pp. 14 and 148 *et seq.*

Suppose, for illustration, that A is the owner of a bond, and that he sells a coupon clipped therefrom to B, and B enters suit thereon against C, who sets up that the bond from which the coupon is clipped is a forgery.

By failing to make out a perfect defense he loses his case and pays the judgment.

Subsequently A is about to bring suit upon the bond, when the same defendant (C) shows such a state of facts as would authorize a court of equity to perpetually enjoin A, because the bond is a forgery, and to compel a surrender of the forged bond for cancellation. Would the judgment in the suit between B and C, where the same FACT or QUESTION

was in issue, be available as *res adjudicata*, there being no agreement or purpose in making the transfer to B to have him sue to test the question?

I should say not. The parties are not the same, nor has "A" had any opportunity to take any part in B's suit, to introduce evidence or cross-examine witnesses. All of these things are necessary to make the plea of *res adjudicata* available.

39 Am. Dec., 313.
24 How., 233.
50 Am. Dec., 680.
24 How., 333.
94 U. S., 606.
60 Am. Dec., 515.

If the State is not bound by the proceeding to which Hamblen county was a party, how can it be that the State can plead that adjudication as *res adjudicata?* If that adjudication were not conclusive upon the State's rights, then the question is still open between the owner of the property and the State. If the State is a *stranger* to that proceeding it cannot have any advantage from it as *res adjudicata.*

5 Wall, 433.
9 Wall, 175.
91 U. S., 241.
94 U. S., 22.
95 U. S., 347.
103 U. S., 498.
104 U. S., 261.

WM. M. BAXTER,
Solicitor for Appellee.

APPENDIX.

ORIGINAL BILL.

To the Hon. E. H. East, Chancellor, &c., Holding the Chancery Court at Nashville.

THE BILL OF THE STATE OF TENNESSEE

vs.

THE EDGEFIELD AND KENTUCKY RAILROAD COMPANY, Nashville and Northwestern Railroad Company, Memphis, Clarksville and Louisville Railroad Company, McMinnville and Manchester Railroad Company, Winchester and Alabama Railroad Company, Southwestern or Southern Railroad Company, Knoxville and Kentucky Railroad Company, Cincinnati, Cumberland Gap and Charleston Railroad Company, Knoxville and Charleston Railroad Company, Rogersville and Jefferson Railroad Company, East Tennessee and Western North Carolina Railroad Company, all of which companies are chartered by the Legislature of Tennessee and have their principal places of business in this State, and, as near as can be ascertained, in the following places: The first two at Nashville, the third at Clarksville, the fourth at McMinnville, the fifth at Winchester, the sixth at McMinnville or Sparta, the seventh, eighth, and ninth at Knoxville, the tenth at Rogersville, Hawkins county, and the eleventh at Johnson Depot, Washington county, and against the respective stockholders

of these companies, the holders of the bonds issued by the State to these companies, and the holders of bonds issued by any of these companies, and the creditors of said companies and all other persons interested in said several roads or companies, all of whose names and residences are unknown, except as follows: The County of Davidson, a stockholder in both the Edgefield and Kentucky and the Nashville and Northwestern Railroad Companies; William Connell, Enoch Cunningham, citizens of Davidson county, and E. A. Fort and Isaac Turner, citizens of Robertson county and stockholders in the Edgefield and Kentucky Railroad Company; R. C. McNairy, M. Burns, and E. H. Hicks, citizens of Davidson county, Tennessee, and stockholders of and perhaps creditors and holders of bonds issued by the Nashville and Northwestern Railroad Company; Gustavus A. Henry and Montgomery County, stockholders and perhaps creditors and holders of bonds of the Memphis, Clarksville and Louisville Railroad Company; P. H. Marbury, Wm. P. Hickerson, James P. Thompson, L. D. Hickerson, William Moore, and Matt. Smartt, citizens of Warren or Coffee county and stockholders of the McMinnville and Manchester Railroad Company; the Mayor and City Council of Nashville and John Frizzell, of Davidson county, stockholders in the Winchester and Alabama Railroad Company; J. H. Hughes and J. B. Armstrong, of Warren county; G. G. Dibrell, of White county, stockholders of the Southwestern Railroad Company; G. W. Ross, C. M. McGhee, P. Dickinson, H. S. Chamberlain, E. J. Sanford, citizens of Knox, Campbell, and Anderson counties, and the City of Knoxville, stockholders of the Knoxville and Kentucky Railroad Company; O. E. Carriger and D. Morris, of Hamblen county; Wm. H. Moore, of Jefferson county, and Alex. E. Smith, of Cocke county, stockholders of the Cincinnati, Cumberland Gap and Charleston Railroad

Company; the City of Knoxville, Knox County, Blount County, and Thos. O'Conner, of Knox county, stockholders of the Knoxville and Charleston Railroad Company; Hawkins County, C. J. McKinney, stockholders of the Rogersville and Jefferson Railroad Company; Carter County and E. Simmerly, of Carter county, stockholders of the East Tennessee and Western North Carolina Railroad Company.

And thereupon your orator complains and says that by an act of the General Assembly of 11th of February, 1852, chapter 151, and subsequent acts amendatory thereof a system of internal improvements by means of railroad was inaugurated and developed by the aid of your orator through the loan of its credit in the form of coupon bonds, issued to the several railroad companies to whom State aid was granted, having not less than thirty years to mature, payable at such places in the United States as the president of the company might designate, and bearing six per cent. per annum interest, payable semi-annually. Said acts provide for the issuance of said bonds from time to time as the work progresses on the said roads, and that the bonds when issued shall constitute a lien upon so much of the road as may then be prepared, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon the iron rails, chairs, spikes and equipments when purchased and delivered, and that your orator upon the issuance of said bonds and by virtue of the same shall be invested with said lien or mortgage without a deed from the company for the payment by said company of said bonds, with interest thereon as the same becomes due.

Said acts further provide that when the whole of said road shall be completed your orator shall be invested with a lien, without a deed from the company, upon the entire road, including the stock, right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and

equipments, and all the property owned by the company as incident to or necessary for its business, and all depots and depot stations, for the payment of all of said bonds issued to the company, and for the interest accruing on said bonds.

It is further provided by section 4 of the original act of 1852 that after the Governor shall have issued bonds for the first section of the road it shall not be lawful for said company to give, create, or convey to any person or persons or body corporate whatever any lien, encumbrance, or mortgage of any kind which shall have priority over or come in conflict with the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, and the said lien or mortgage of the State shall have priority over all other claims existing or to exist against said company. By the 5th section of the original act as amended by act of 26th January, 1869, chapter 19, it is provided that the company to which bonds are issued shall pay to the comptroller of the State, at least fifteen days before the interest becomes due, from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been provided for, and on failure it is made the duty of the comptroller to report to the Governor, who shall immediately appoint some suitable person, at the expense of the company, to take possession and control of said road and all the assets thereof, and manage the same and receive the rents, issues, property, and dividends thereof, and pay over the same, under the direction of the Governor, towards the liquidation of such unpaid interest, and said receiver shall continue in possession and run and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, to pay off and discharge the interest as aforesaid.

By the 6th section provision is made for the case where the railroad company fails to pay the bonds at maturity.

By the 7th section provision is made for the payment of a sinking fund for the payment of the bonds so issued, and in case of failure to comply with its provisions, it is provided that the company so failing shall be proceeded against as provided in the fifth section of the act.

The 12th section of said act is in these words:

"SECTION 12. *Be it enacted*, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof hereafter all such laws as may be deemed necessary to protect the interest of the State and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies."

By the 10th section of the original act the benefit of its provisions was extended to five of the railroad companies mentioned in the caption of this bill, viz., the Nashville and Northwestern Railroad Company, the Southwestern Railroad Company, the McMinnville and Manchester Railroad Company, the Memphis, Clarksville and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, and by subsequent acts the benefit of its provisions and of the acts amendatory thereof was extended to each of the roads mentioned in said caption. By subsequent acts amendatory of the act of 1852 the extent of State aid was largely increased by authorizing the issuance of State bonds to a much larger amount for each mile of road than the original eight thousand dollars per mile mentioned in said act, and for the purpose of building bridges, trestles, roadway, embankments, &c. By subsequent legislation also the time of paying in the sinking fund and the per cent. of such fund was changed for the accommodation of said roads and every indulgence extended to them by the Legislature to aid them in their completion and equipment and to secure to the people the benefits of a liberal system of internal improvements and to the stockholders and other per-

sons interested in the roads themselves directly the fruits of their investment. In all cases in which State aid was extended or increased to any of said companies beyond the provisions of the act of 1852 it was expressly provided that your orator should have for its security the same lien given by the act of 1852, and in substance, to use the language of the 10th section of that act, "said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this (that) act."

Your orator would further show that, large arrears of unpaid interest having accrued during the pendency of the late civil war, the Legislature, by act of the 23d November, 1865, chapter 9, provided for the funding of such interest by issuing coupon State bonds similar to those issued under the act of 1852 and its amendments, and maturing at the same time, for all the interest which had accrued or might up to the first of January, 1868, accrue upon any of the bonds issued under these acts previous to the 6th of May, 1861. And by the 4th section of the said act of 1865 the Legislature directed that such funded interest should be charged up to said companies on the same terms and conditions of the original loan, and that the State shall have the liens upon each of said roads, their franchises and property, for the prompt and faithful payment of the principal and interest of the bonds thus authorized to be issued, as it has under the act of 1852 and its amendments, for bonds issued under them; and by the 5th section it is provided that the several railroad companies receiving aid under the act of 1865 by the funding of the interest should pay the interest on the bonds thus issued as it matures, commencing on the 15th day of June, 1866, in the same manner and under the same rules, regulations, and restrictions as they are now required to pay under the act of 1852 and its amendments. By the 6th section of said act the law requiring the railroad companies who had received State aid to pay into the treasury of the State a sinking fund was suspended until

January 1st, 1867 (afterwards extended by 1867, 22, to 1st January, 1870), and the companies were relieved from the payment of the sinking fund, then past due, under said laws. Your orator states that all of the railroad companies made defendants to this bill, as well as the other companies who had received State aid under the act of 1852 and its amendments, acquiesced in the provisions of the said act of 1865, and received and accepted its benefits. Your orator would further show that by act of the 18th January, 1866, chapter 14, entitled "An act to amend an act to establish a system of internal improvements, passed the 11th of February, 1852," the Legislature, reciting the facts that the railroads therein named were out of repair and the companies unable to put them in running order, provided for the extension of additional State aid to said roads by the issuance of coupon State bonds, similar in character in every respect to the bonds issued under the act of 1852, said bonds to bear date January 1st, 1866, and be payable the 1st of January, 1892. The roads thus provided for include the companies made defendants to this bill, as follows:

Edgefield and Kentucky	$115,000
Nashville and Northwestern	300,000
Memphis, Clarksville and Louisville	400,000
McMinnville and Manchester	346,000
Winchester and Alabama	372,000
Knoxville and Kentucky	250,000
Rogersville and Jefferson	100,000

By the act of May 22, 1866, same session, the Legislature amended the foregoing act of the 18th of January, 1866, by extending additional aid to the Cincinnati, Cumberland Gap and Charleston, $100,000; Nashville and Northwestern, $200,000.

By act of May 24th, 1866, chapter 88, sections 58 and 59, of same session, additional aid was extended to the following companies:

Edgefield and Kentucky	$110,000
Memphis, Clarksville and Louisville	100,000
Knoxville and Kentucky	250,000

"Said bonds to be issued with all the restrictions, liens, and provisions of the act passed January 18th, 1866." And by act of the 20th May, 1866, chapter 49, of the same session, further additional aid to the amount of $54,000 was granted to the McMinnville and Manchester Railroad Company, on the same terms as provided by the act of 18th of January, 1866. By the terms of this latter act, section 4, each of the companies to whom relief was granted was required to pay the interest on the bonds thus issued, and a sinking fund of four per cent. on the amount of indebtedness created under the act, to be enforced as provided under the internal improvement law.

Section 8 is as follows:

"That the lien retained or declared in the fourth section of this act is hereby declared cumulative of and in addition to the lien declared in the act of 1852, which this is intended to amend, *which lien is hereby declared to extend to and cover the money or bonds to be advanced to said roads under this act.*"

Your orator believes, and so charges, that the Legislature has, in every instance in which State aid has been extended to railroad companies, including the defendants to this bill, been careful to provide that the paramount statutory lien reserved by the act of 1852 should enure to your orator's benefit for the new or additional aid; that the additional aid was received by the companies upon these terms and conditions with the full knowledge and assent of the stockholders of said several companies and of the holders of the bonds previously issued by the State to those companies, and of the holders of the bonds of those companies, if any such bonds were issued by them, and of the creditors of said companies and all other persons interested in said several roads and companies, and who are made

defendants to this bill; and if there were not actual knowledge and positive assent there was such constructive knowledge and tacit assent as will in law amount to the same thing. Your orator claims to have acquired, by virtue of the said several acts of the Legislature amendatory of the act of 1852, and granting additional aid to said several railroad companies, a statutory lien or mortgage upon the entire road of said several companies, including the stock, right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments and all the property owned by the companies and necessary for its business, and all depots and depot stations, its "franchises and property" (1865, 9, 4), prior and superior to all other liens whatsoever and whensoever created, all other liens, incumbrances, and mortgages being null and void (1852, 151, 4) as against said lien and mortgage of your orator.

Your orator would now show your honor that the 34th section of the charter of the Nashville and Chattanooga Railroad Company (passed on the 11th of December, 1845, ch. 1) is in these words:

"This charter shall be amendable from time to time by the Legislature whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the Legislature and submitted to the directory and be accepted and adopted unanimously by the president and directory they shall be obligatory on the stockholders, and not otherwise."

The 50th section of the charter of the Louisville and Nashville Railroad Company, passed 9th July, 1850, ch. 76, is the same in substance and nearly identical in language. The same provision is contained in the 28th section of the charter of the East Tennessee and Virginia Railroad Company, passed 27th January, 1848, ch. 120. The charters of all the companies made defendants to this bill contain the same provision, except that of the Nashville and Northwest-

ern Railroad Company, by being chartered with the privileges and under the acts of incorporation of one of the companies above named. Thus, the East Tennessee and Western North Carolina is chartered under the incorporation of the East Tennessee and Virginia; the Knoxville and Kentucky, and Cincinnati, Cumberland Gap and Charleston under the charter of the Louisville and Nashville, and all the others under the charter of the Nashville and Chattanooga Company.

Your orator would further show that on the 7th of December, 1867, the Legislature passed an act (ch. 17 of the printed acts of the session) entitled "An act to amend the internal improvement laws of the State, passed February 11, 1852," whereby it is provided that additional State aid shall issue to the railroad therein named, and, among others, to the companies made defendants to this bill, as follows:

Edgefield and Kentucky	$300,000
Nashville and Northwestern	350,000
Nashville and Northwestern extension to Huntington	200,000
Winchester and Alabama	300,000
Southwestern	300,000
Knoxville and Kentucky	800,000
Cincinnati, Cumberland Gap and Charleston	200,000
Knoxville and Charleston	150,000
East Tennessee and Western North Carolina	200,000

The act provides (section 16) that these loans shall be made in like manner and under the same conditions imposed by the internal improvement laws of the State. It further provides, section 15, "That if the several railroad companies, or either of them, to whom the bonds of the State have been loaned by *this act or former acts* shall fail for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, then and in that case the Governor, or secretary of state, and comptroller may, at their discretion, sell said railroad, track, railing, rolling stock, &c., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale the amounts loaned to said

companies and the interest due on the same, with expenses of said sale."

The act further provides, section 14, that when any railroad company shall accept the benefits of this loan they shall accept the State directors also, who shall be entitled to all the rights and privileges of the directors on said roads.

Your orator avers that each of the said railroad companies to whom State aid was extended by this act accepted the aid and the terms and provisions thereof; that the act itself was procured to be passed by the said companies and was ratified by the boards of directors of said several companies and by the stockholders at meetings called for the purpose or by both. Your orator charges also that the additional aid or loan given to said several roads by the said act was received by them severally, under the provision of the act, and the terms and conditions of the loan assented to and acquiesced in.

Your orator further shows that the Edgefield and Kentucky Railroad Company, to whom the loan was, by the express terms of the act made, among other purposes, "for the construction of the extension of said road to the coal mines, under the charter of the Evansville, Henderson, and Nashville railroad," through its officers, called a meeting of its board of directors for the purpose of acting upon this matter, which meeting was held at Nashville on the 27th of December, 1867, when and where the following proceedings were had:

[COPY.]

"SUPERINTENDENT'S OFFICE,
"EDGEFIELD AND KENTUCKY RAILROAD.
"M. L. BLANTON, *Superintendent.*
"NASHVILLE, TENN., *December* 27, 1867.

"Board met. Present: E. S. Cheatham, president; Hobson, Fort, Stark, and Connell, directors.

"On motion of Mr. Fort, the following preamble and resolutions were offered and unanimously adopted:

"WHEREAS the act of the Legislature of the State of Tennessee passed December 7th, 1867, entitled An act to amend the internal improvement laws of the State, passed February 11th, 1852, was submitted for consideration and action of this board, as provided in said act: Be it

"*Resolved*, That the Edgefield and Kentucky Railroad Company consents to and agrees to receive the aid of the State, as provided in said act, and consents to the bonds being issued to the receiver and J. T. Boyle, president of the Evansville, Henderson, and Nashville railroad, to be used in building depots, purchasing machinery, rolling stock, and repairs for the Edgefield and Kentucky railroad.

"*Resolved*, That one hundred thousand dollars of the bonds should be appropriated to the Edgefield and Kentucky railroad and two hundred thousand to the Evansville, Henderson, and Nashville railroad.

"*Resolved*, That a certified copy of the resolutions be furnished by the secretary of this company to R. B. Cheatham, receiver, to be filed with the secretary of the State of Tennessee.

"The meeting adjourned to January 10th, 1868, at 10 a. m.

"(Signed) EDWARD S. CHEATHAM,
"*Pres't of E. & Ky. R. R. Co.*"

Your orator further shows that the Nashville and Northwestern Railroad Company, through its president and directors, called a meeting of its stockholders for the purpose of taking into consideration the acceptance or rejection of the provisions of this act, which was held and the aid granted accepted, as well the aid given to the extension to Huntingdon as the aid given to the main trunk.

Your orator is not able to specify the facts with the same particularity with regard to the other roads made defendants to the bill, but charges that the aid was accepted and used and the terms of the act agreed to, and that the State directors were also accepted. Your orator would further show, in this connection, that although the Rogersville and Jefferson Railroad Company is not included in the act of December 7th, 1867, yet at the same session of the Legislature, on the 7th day of March, 1868, a special act was passed

for the benefit of this company, authorizing the Governor to issue to it or to the receiver then in control of it thirty thousand dollars in State bonds, provided the said railroad company, by its president and directory, shall accept the provisions of this act, and provided also they shall accept the conditions and provisions of section 15 of an act passed December 7th, 1867, entitled "An act to amend the internal-improvement laws of the State passed February 11th, 1852." And your orator charges that the said president and directors did accept the provisions of said act, and the bonds were issued and received accordingly.

Your orator would further show that only two of the railroad companies made defendants to this bill, so far as your orator is at present advised, have issued their own bonds and secured the same by a mortgage, pledge, or lien on their roads or incomes, viz., the Nashville and Northwestern Railroad Company and the Memphis, Clarksville, and Louisville Railroad Company.

The first of these companies was authorized by its charter (act of 22d January, 1852, ch. 74, section 16) to borrow money on the mortgage of its charter and works, and did on the —— day of ——, in the exercise of this power, authorize the issue of bonds to the amount of one million dollars, secured by mortgage, of which about seven hundred and fifty or eight hundred thousand dollars in nominal amount were issued; but the mortgage deed itself contains the following clause in reference to the lien of the State bonds: "But this grant, conveyance, and mortgage is made subject expressly to the statutory lien of the State of Tennessee for the State aid which has heretofore or may hereafter be granted to this company under the internal-improvement laws of the State or under any legislation made for the benefit of this company to carry out the purposes of its incorporation."

By act of February 1, 1860, ch. 45, the Memphis, Clarksville and Louisville Railroad Company is authorized to issue from time to time income bonds in amount not to ex-

ceed $350,000 in the aggregate, pledging the receipts of said railroad; and to secure the payment of the principal and interest of the bonds the company may mortgage to trustees and pay the property recited therein, and privileges and franchises, whatever these words (and they are the words of the act) may mean: "*Provided, however*, That said bonds or any mortgage made to secure them shall in nowise affect the lien of the State of Tennessee, created by the general internal-improvement law of February 11, 1852, and laws amendatory thereof, either upon (the) part of said road on which State aid has been drawn or upon any part of the same in which it may be subsequently drawn, but shall in all cases be and regarded as secondary in right to the same, the State of Tennessee hereby expressly reserving priority of lien, as is provided by (the) General internal-improvement act."

By section 2 it is provided "that the said bonds are hereby authorized to contain on their face a pledge of the income of said company from their road, after paying liabilities due the State of Tennessee, charges for running, and the necessary repairs of said road."

And by section 3, to make assurance doubly sure, it is further provided "that this act shall not be so construed to affect, nor shall any mortgage executed by its provisions impair or in any way affect, change, or weaken, the lien of the State of Tennessee created by the State of Tennessee in *conferring or accepting State aid* by said company."

Your orator does not know what amount of bonds were issued and used under this act, but insists that such bonds and any mortgage or pledge made to secure them can in nowise affect the lien and rights of the State for any aid conferred or accepted under the internal-improvement law of 1852 or any subsequent act amendatory or in extension thereof or in furtherance of their objects.

Your orator would further show that by the act of the 24th of May, 1866, ch. 88, section 57, which was procured

by and passed at the instance of the companies named therein, the Governor was authorized to execute a bond for the "purchase of railroad machinery, cars, and all other material purchased for the use and benefit of the Memphis, Clarksville and Louisville and the Edgefield and Kentucky railroads from the United States military railroad department at Nashville of the United States;" that the object of this provision was to procure from the United States rolling stock and machinery for the running of these roads, the companies being themselves unable to make these purchases. Accordingly, his excellency William G. Brownlow, the then Governor of the State, did, on the —— day of ————, 186–, assume the payment to the United States of $130,804.58 for the benefit of the Edgefield and Kentucky Railroad Company, and on the —— day of ————, 186–, the payment in like manner of $380,756.24 for the benefit of the Memphis, Clarksville and Louisville Railroad Company. The stock and material thus obtained have been in the possession and use of and for the benefit of said roads, respectively, ever since, and are now used upon these roads. Your orator would further show that not one of the railroad companies made defendants to this bill has complied with the provisions of the internal-improvement laws by promptly paying the interest upon the bonds issued to it as the same fell due, from time to time, or the sinking fund to meet the principal of the bonds at maturity, but they are all in default in these respects and have been for many years, and the arrears are accumulating to such an extent as to exhaust the State treasury and render it absolutely necessary to resort to some plan for relief.

Your orator resorted in each instance to the mode provided by the act of 1852, and appointed receivers of said roads to run the same as therein contemplated; but in nearly every case, instead of having a surplus to apply to the reduction of the arrears of interest after paying the expenses of running the roads, the expenses have exceeded the in-

come, and there has been actual loss; and even where payments have been made they have been so small in proportion to the increase of the debt in the same time as to demonstrate the inutility of expecting relief in that mode. Your orator will state presently the items of indebtedness of each of said roads to your orator, but at present the following is a list of the gross indebtedness, including interest to the 1st of January, 1871:

Edgefield and Kentucky Railroad Company	$2,081,179 71
Nashville and Northwestern Railroad Company	4,541,129 41
Memphis, Clarksville and Louisville Railroad Company	2,953,795 92
McMinnville and Manchester Railroad Company	1,099,578 00
Winchester and Alabama Railroad Company	1,790,536 70
Southwestern Railroad Company	503,000 00
Knoxville and Kentucky Railroad Company	2,816,176 00
Cincinnati, Cumberland Gap and Charleston Railroad Company	1,657,108 52
Knoxville and Charleston Railroad Company	816,500 00
Rogersville and Jefferson Railroad Company	513,013 20
East Tennessee and Western North Carolina Railroad Company	448,000 00

Your orator finds and so charges that these sums are so large in every instance, when taken in connection with the length of road, the resources, and probable income for the future, that it is impossible to expect any of these companies to meet its engagements, under the provisions of the internal-improvement laws, by the payment of interest and sinking fund, as stipulated, for several of them, such as the Southwestern, Cincinnati, Cumberland Gap and Charleston, Knoxville and Charleston, Rogersville and Jefferson, and East Tennesse and Western North Carolina, are utterly insolvent, without the least prospect of ever paying the accruing interest, or even running expenses.

The same is true of the Winchester and Alabama and the McMinnville and Manchester, so far as their ever paying the accruing interest is concerned.

The remaining three roads form connecting links with other lines of railroads, and, if prudently managed by persons having the means to run them, might pay expenses, and in

time a portion of the accruing interest. But your orator charges that neither one of these, under the best of management, and, making all proper allowance for increased business, can ever hope to pay the arrears of interest and sinking fund, nor even perhaps the whole of the annual accruing interest. The companies are themselves insolvent, without any rolling stock except that purchased from the United States Government and not paid for, and without any resources for the future, two of them, as we have seen, being heavily mortgaged, and are being run by other companies under lease, and the other being so heavily in debt, in proportion to its length and connections, as to render another mortgage out of the question; and if even there were any reasonable prospect to any of those roads in future, neither your orator nor they can afford to wait for the chance.

Under these circumstances, the Legislature, by act of July, 5th, 1870, chapter 79, appointed the Governor, secretary of state, and comptroller, and the Hon. F. B. Fogg, A. Wright, and R. J. McKinney commissioners to sell and transfer the interest of the State in delinquent railroads; and these commissioners, after due notice, undertook, on the 3d of November, 1870, to sell the interest of the State in the several railroad companies made defendants to this bill, but failed to receive a bid for either road. This result, it appears from the report of the commissioners, grew out of the fact that the minimum price which the commissioners were authorized to accept for the interest sold in any road was the amount of the debt due the State, which amount was rendered uncertain in the case of several of the roads by circumstances detailed in the report, and was in the case of other roads much larger nominally than the value of the debts or even of the roads.

Under these circumstances the Legislature, on the 21st December, 1870, passed an act to amend the act of 1870, chapter 79, and directed a bill to be filed in the chancery court at Nashville, in the name of the State, against the delinquent

companies, the respective stockholders, holders of bonds, creditors, and all persons interested in said several roads, to settle all matters of controversy touching the rights and interests of the State, ascertain such interests, and define the purchasers' rights, and for other purposes, and this bill is filed accordingly.

Your orator would now show your honor that the State aid has been advanced to the Edgefield and Kentucky Railroad Company as follows:

To E. S. Cheatham, president,	April 4, 1857,	under Dec'r 15, 1855,	$20,000
" " "	June 24, 1857,	" " "	20,000
" " "	August 13, 1857,	" " "	20,000
" " "	Oct'r 17, 1857,	" " "	40,000
" " "	March 10, 1858,	" " "	40,000
" " "	Sept. 27, 1858,	" " "	20,000
" " "	Dec. 28, 1858,	" " "	20,000
" " "	Oct'r 6, 1859,	" " "	20,000
" John L. Helm, agent	Jan'y 21, 1860,	" " "	11,000
			$211,000

The bonds to this amount seem to have been drawn for the purpose of building the railroad bridge over the Cumberland river at Nashville, which was a joint enterprise of the Edgefield and Kentucky and Louisville and Nashville Railroad Companies, and it is claimed by the former road that the latter road has paid off to your orator its one-half of the debt thus created, leaving the other half only as a charge on the former road. How this is your orator does not know, and requires the defendant to show the fact. Admitting the claim for the present, the statement of debt will be:

One-half foregoing advances			$105,500
To E. S. Cheatham, president,	under June 11, 1858		300,000
" " "	" February 12, 1859		26,000
" " "	" August 30, 1859		10,000
" " "	" September 30, 1859		17,000
" " "	May 24, 1859,	under Feb. 11, 1852	180,000
" " "	under June 9, 1859		10,000
" " "	" January 23, 1860		51,000
" " "	April 16, 1860,	under Mar. 22, 1860	45,000
			$750,000

All these bonds were issued previous to the war, and the

company, failing to meet the interest upon the bonds as they fell due, the Governor, under the provisions of the act of February 11, 1852, as early as the close of the year 1860 or the beginning of the year 1861, appointed Adna Anderson receiver, and the road has been in the hands of receivers ever since, the receivers since the war being R. B. Cheatham, John B. Brownlow, E. A. Fort, and now Wm. Connell, the president of the company.

After the war State aid was again extended to this road, under the act hereinbefore recited and others, as follows:

Former aid brought forward	$750,000 00
To R. B. Cheatham, receiver, Apr. 23, 1866, under Jan. 18, 1866	115,000 00
" " " June 20, 1866, under May 24, 1866	110,000 00
" " " Jan. 14, 1868, under Dec. 7, 1867	25,000 00
" " " Jan. 26, " " " 7, "	75,000 00
" J. T. Boyle, president Jan. 8, " " " 7, "	50,000 00
" " " Jan. 17, " " " 7, "	68,000 00
" " " Jan. 18, " " " 7, "	32,000 00
" " " Jan. 24, " " " 7, "	50,000 00
	$1,275,500 00

To this add—

Funded interest under November 23, 1865	$231,812 00
Unfunded interest in arrears 1st January, 1871	402,492 26
Debt to United States and interest to January 1st, 1871	171,375 45
	$2,081,179 71

This road is only forty-seven or forty-eight miles in length, and its entire stock subscription was only $380,000, all of which, so far as it could be realized, has long since been spent. During the whole period of its existence the road has never paid the expenses of running it, and has only made one payment of surplus earnings over expenses, and that in the month of August, 1870, of $2,000, which was applied for the benefit of private parties, provided for by act of February 18, 1870, ch. 61, which act was passed by the procurement and at the instance of the said company, the parties provided for being directors or officers of said roads. This act provides for the payment to the parties named of $57,055 out of the earnings of the road and in the hands of the receiver. The whole road is worth little if

any over one-half of its indebtedness to your orator. It is not within the bounds of reason to suppose that it will ever pay accruing interest, much less the arrears of interest and the body of the bonds.

Your orator would further show that there were issued to the Nashville and Northwestern Railroad Company bonds as follows:

To V. K. Stevenson, ag't,	Dec. 22, 1859, under 11 Feb., 1852	$280,000 00
" " "	June 2, 1860, bridge aid	50,000 00
" Jno. O. Ewing, agent,	June 29, 1860, under Feb. 11, 1852	100,000 00
" " "	Aug. 11, 1860	130,000 00
" " "	Sept. 14, 1860, bridge aid	170,000 00
" " "	Oct. 19, 1860, under Feb. 11, 1852	165,000 00
" " "	Dec. 18, 1860, under Feb. 11, 1852	190,000 00
" " "	Jan. 22, 1860, under Feb. 11, 1852	120,000 00
" " "	Feb. 23, 1861, under Feb. 11, 1852	130,000 00
" " "	Apr. 22, 1861, under Feb. 11, 1852	120,000 00
Before the war		$1,455,000 00
To M. Burns, president,	Apr. 4, 1860, under Jan. 18, 1866	275,000 00
" " "	May 12, 1866, under Feb. 11, 1852	225,000 00
" " "	July 6, 1866, under Jan. 18, 1866	150,000 00
" " "	July 17, 1866, under May 22, 1866	75,000 00
" H. L. Claiborne, sec'y,	Dec. 6, 1866, under Jan. 18, 1866	50,000 00
" M. Burns, president,	Jan. 2, 1867, under Dec. 10, 1866	200,000 00
" " "	Mar. 23, 1867, under Dec. 10, 1866	25,000 00
" " "	Mar. 27, 1867, under Mar. 7, 1867	125,000 00
" " "	June 25, 1867, under Dec. 10, 1866	92,000 00
" W. P. Jones, receiver,	Dec. 27, 1867, under Dec. 7, 1867	100,000 00
" D. B. Cliff, "	July 17, 1868, under Dec. 7, 1867	43,000 00
" " "	July 27, 1868, under Dec. 7, 1867	207,000 00
" " "	July 29, 1868, under Dec. 7, 1867	100,000 00
" " "	July 29, 1868, under Dec. 7, 1867	100,000 00
Total bonds		$3,222,000 00
Funded interest under November 23, 1865		392,850 00
Unfunded interest in arrears		926,279 41
Grand total 1st January, 1871		$4,541,129 41

This road runs from Nashville to the Mississippi river, at Hickman, a distance of —— miles, and is an important road in length and connections; but besides its enormous debt to your orator, it is in debt to the United States for rolling stock to the amount, with interest, of over a half a million of dollars; to mortgage bondholders, over a million of dollars, and a floating debt of several hundred thousand dol-

lars. It is now being run under a lease by the Nashville and Chattanooga Railroad Company, and thus far the expenditures have exceeded the income. It has paid neither interest nor sinking fund, nor is likely to do so for years, if ever, and there is no reasonable probability that it will ever at any time be able to pay the large arrears of interest due as above.

Your orator would further show that there were issued to the Memphis, Clarksville and Louisville Railroad Company bonds as follows:

March 17, 1858—To Geo. B. Fleece, agent, under act of Feb. 26, 1856	$20,000 00
December 20, 1858—To Wm. A. Quarles, president, bridge aid	10,000 00
June 27, 1859—To Charles G. Smith, agent, bridge aid	40,000 00
July 9, 1859—To Wm. A. Quarles, president, under act of Feb. 11, 1852	300,000 00
October 6, 1859—To Thomas W. Wisdom, agent, bridge aid	20,000 00
December 3, 1859—To Charles G. Smith, agent, bridge aid	20,000 00
May 1, 1860—To Wm. A. Quarles, president, under act Feb. 11, 1852	100,000 00
June 27, 1860—To Wm. A. Quarles, president, under act Feb. 11, 1852	169,000 00
July 26, 1860—To W. A. Quarles, president, bridge aid	20,000 00
July 26, 1860—To W. A. Quarles, president, bridge aid	40,000 00
September 22, 1860—To George B. Fleece, bridge aid	20,000 00
October 23, 1860—To W. A. Quarles, bridge aid	180,000 00
December 5, 1860—Charles G. Smith, bridge aid	20,000 00
February 21, 1861—R. W. Humphreys, president, under act Feb. 11, 1852	83,000 00
Total	$1,042,000 00

BONDS SINCE THE WAR.

March 27, 1866—Thos. H. Callaway, agent, under act Feb. 8, 1854	$40,000 00
April 14, 1866—G. T. Lewis, rec'r, under act Jan. 18, 1866	150,000 00
April 19, " " " " " "	64,000 00
May 8, " " " " " "	50,000 00
June 13, " " " " " "	100,000 00
July 6, " " " " " May, 1866	136,000 00
Total	$540,000 00
Bonds before the war	1,042,000 00
	$1,582,000 00
Including interest (see Report of Comptroller, page 6)	312,600 00
Interest due to January, 1871	559,525 92
Claims of United States *vs.* assumed by State for	380,756 24
Interest on same to January, 1871	118,913 76
	$2,953,795 92

This road runs from the State line through Clarksville to ———, a distance of —— miles, and is important in forming a link in the line of roads from Louisville to Memphis. The stock amounts to about $700,000, all of which has been collected and used which could be realized. The whole road is not worth more than two-thirds of its indebtedness to the State, if so much. It has paid no part of the interest or sinking fund, and has been run for several years by the Louisville and Nashville Railroad Company. It is hopelessly insolvent, and has itself instituted proceedings in the United States district court at Nashville to be declared a bankrupt. There is no reasonable prospect of its ever paying accruing interest, much less the large arrears of debt to your orator.

Your orator states that the bonds issued to the McMinnville and Manchester Railroad Company are as follows:

To P. H. Marbury, pres.,				July 21, 1855,	under	Feb. 11, 1852			$300,000
"	"	"	"	July 21, 1856,	"	"	"		20,000
"	"	"	"	Nov. 19, 1856,	"	"	"		52,000
"	"	"	"	April 4, 1866,	"	Jan. 18, 1866			346,000
"	"	"	"	Jan. 26, 1866,	"	May 25, 1866			54,000
									$772,000
Funded interest									87,360
Unfunded interest									240,218
									$1,099,578

This road runs from Tullahoma to McMinnville, a distance of —— miles, and is a mere local branch to the Nashville and Chattanooga Railroad Company. It is hopelessly insolvent, has never paid any interest, and is not likely to pay any.

Your orator shows that the bonds issued to the Winchester and Alabama Railroad Company were as follows:

BONDS ISSUED BEFORE THE WAR.

May 10, 1858—	To V. K. Stevenson, agent,			act 1856		$7,000 00
June 9,	" — "	"	"	bridge aid		7,000 00
July 22,	" — "	"	"	Feb. 11, 1852		150,000 00
Dec. 30,	" — "	"	"	bridge aid		2,000 00
Jan. 31, 1859—	"	"	"	Feb. 11, 1852		111,000 00
Jan. 21, 1860—	"	"	"	"	"	136,000 00
Feb. 23, 1860—	" James R. Bright, agent,			bridge aid		20,000 00
Total before the war						$433,000 00

SINCE THE WAR.

March 10, 1868	To J. M. Russey, pres., under July, 1866	$250,000 00
July 13, "	" " " " " " "	122,000 00
April 16, 1867	" " " " " Dec. 10, '66	150,000 00
Dec. 11, 1867	" D. E. Davenport, receiver, 1855–'6	34,000 00
Jan. 30, 1868	" " " " " order of Governor	300,000 00
		$856,000 00
As above		433,000 00
Total of bonds		$1,289,000 00
Funded interest		143,259 00
Interest due to January 1st, 1871		358,277 70
Indebtedness to the State		$1,790,536 70

This road runs from Dechert Station, on the Nashville and Chattanooga railroad, through Winchester, to Fayetteville, in Lincoln county, a distance of ——— miles. It is a mere local road, without any outlet or connections, and hopelessly insolvent. It has never paid and will not, in all probability, be able to pay any interest upon the debt to your orator.

Your orator would further state that the Southwestern Railroad Company was incorporated (1851–'2, see page 462), with powers, &c., of Nashville and Chattanooga Railroad Company; lay dormant until 1865–'6, when its charter was revived (see page 295). By act of December 7, 1867, page 14, section 4, it was given $300,000.

BONDS ISSUED.

June 27, 1868.	S. Parker, president, under Dec. 7, 1867, only	$300,000
July 12, 1869.	" " " Oct. 9, 1852, "	30,000
Aug. 16, "	J. W. Johnson, receiver, Oct. 9, 1852, only	30,000
Sept. 7, "	" " " " 9, 1852, "	27,000
Oct. 7, "	" " " Feb. 26, 1869, ch. 53, sec. 582	31,000
Jan. 25, 1870.	G. G. Dibrell, president, Feb. 25, 1856, only	16,000
Jan. 28, "	" " " acts '52, '66, '69	69,000
Total		$503,000

Reported worth nothing by Pennebaker, comptroller. It has paid no interest and is never likely to pay any.

The Knoxville and Kentucky Railroad Company was in-

corporated by name of Lexington and Knoxville Railroad Company 1851–'2—see page 386 of acts of 1851–'2—name changed 1853–'4, page 762, to Knoxville and Kentucky. By act of 1851–'2, given the powers of Louisville and Nashville Railroad Company's charter, passed 9th of February, 1850.

Charter amended or rather remodeled 1856. See acts of 1855–'6, page 434.

City of Knoxville a stockholder in, say, $50,000; county of Knox, say, $100,000; county of Anderson, say, ———; county of Campbell, say, ———:

BONDS ISSUED BEFORE THE WAR.

May 7, 1860—To Jos. A. Mabry, president, under act of Feb., 1860	$80,000
Nov. 17, " —To Jos. A. Mabry, president, under act of Feb. 11, 1852	100,000
Amount before the war	$180,000

BONDS ISSUED SINCE THE WAR.

April 27, 1866—To C. M. McGhee, president, under Jan. 18, 1886,	$250,000
July 23, 1866—To R. Craighead, agent, under May 22, 1866	250,000
Jan. 3, 1867—To C. M. McGhee, president, under Feb. 11, 1865,	110,000
" " " " " " " "	20,000
Feb. 14, 1867—To " " " " Dec. 10, 1866,	100,000
March 2, " —" " " " " "	100,000
April 1, " —" C. A. Mitchell, agent, " " "	300,000
Oct. 8, " —" C. M. McGhee, president, " act of 1852	110,000
Jan. 8, 1868—" Jos. A. Mabry, president, under act Dec. 7, 1867	150,000
Jan. 25, " —" Jos. A. Mabry, president, by order of Governor	350,000
Feb. 20, " —" Jos. A. Mabry, president, December 7, 1867	300,000
March 6, 1869—" " " " act of 1852	130,000
Amount of bonds since the war	$2,170,000
Amount before, as above	180,000
Total of bonds	$2,350,000
Add to the above funded interest	43,200
Interest due 1st January, 1871	422,976
Total	$2,816,176

This road runs from Knoxville to the State line, a distance of ——— miles, of which only ——— miles have been built. It has paid no interest and is not likely to pay any.

The Cincinnati, Cumberland Gap and Charleston Railroad Company was incorporated 1853–'4—see acts, page 645—with powers, &c., of Nashville and Louisville Railroad Company as passed 9th February, 1850, page 239, amended by act of 1855–'6, page 55; also by act of 1859–'60, page 171, section 3, five hundred thousand dollars granted to by act of 10th of December, 1866—see page 12, section 1 of act; also two hundred thousand dollars by act, December 7, 1867–'8, section 3, page 14. This railroad comes under section 15 of act 7 of December, 1867–'8.

No bonds were issued before the war, except August 3, 1860, to A. E. Smith, agent, under March 22, 1860, $132,000.

NUMBER OF BONDS ISSUED SINCE THE WAR.

July 19, 1866	To C. E. Carriger, president	$100,000
Aug. 22, " — "	" " " act of 1852	122,000
Dec. 12, " — "	" " " " "	100,000
Feb. 24, 1867 — "	" " " " " "	167,000
April 25, " — "	" " " " Dec. 10, 1866	333,000
Jan. 31, 1868 — "	M. R. Murrell, secretary, by order of Governor	100,000
Jan. 31, " — "	M. R. Murrell, secretary, by order of Governor	100,000
May 1, " — "	M. R. Murrell, president, 1852	219,000
	Total since the war	$1,241,000
	Add $132,000 before the war	132,000
		$1,373,000

Bonds as above	$1,373,000 00
Funded interest	31,680 00
Interest to January 1st, 1871	252,528 52
Total	$1,657,108 52

The road is 44 miles long, runs from Morristown, on East Tennessee and Virginia railroad, to Wolf creek, has no connections, and is hopelessly *insolvent* and *worthless*.

The Knoxville and Charleston Railroad Company was incorporated February 18, 1852 (see Acts of 1851–'2, page 401, sections 57, 58, 59, 60, and 61); same powers, &c., as Nash-

ville and Chattanooga railroad; embraced in acts of 1867–'8 December 7 (see section 8, where $150,000 of bonds given); has been in the hands of receiver for more than two years.

BONDS ISSUED SINCE THE WAR.

Jan. 8, 1867	To C. M. McGhee, president, under act of Dec. 10, 1866	$77,000
April 1, 1867	To C. W. Jones, president, under act of Dec. 10, 1866	82,000
April 29, 1867	To C. W. Jones, president, under act of Dec. 10, 1866	100,000
April 29, 1867	To C. W. Jones, president, under act of Dec. 10, 1866	41,000
Oct. 8, 1867	To C. W. Jones, president. No act given	25,000
Jan. 31, 1868	" " " " By order of Governor	150,000
Feb. 20, "	" " " Act of 1852	50,000
Feb. 20, "	" " " " "	100,000
Feb. 20, "	" " " " "	25,000
May 7, "	" " " " " of 1853–'4	60,000
Total of bonds		$710,000
Funded interest due January 1st, 1871		106,500
Whole amount		$816,500

The road is — miles long, and not worth half its indebtedness to the State.

The Rogersville and Jefferson Railroad Company was incorporated 1851–'2, see page 654, Acts of —, by section 9, same powers, liabilities, &c., of the Nashville and Chattanooga Railroad Company, of acts of 1845–'6:

BONDS ISSUED BEFORE THE WAR.

Jan. 28, 1859	To R. G. Fain, president, bridge aid	$23,000 00
July 7, "	" " act of 1852	100,000 00
Aug. 1, "	" " bridge aid	36,000 00
Total before the war		$159,000 00

BONDS ISSUED SINCE THE WAR.

April 24, 1866	To W. C. Kyle, president, act of 1852	$55,000 00
May 29, "	" W. H. Shepard, agent, act of Jan. 18, 1866	100,000 00
Nov. 30, "	" C. J. McKinney, receiver, act of Jan. 18, 1866	41,000 00
March 28, "	" C. J. McKinney, receiver, act of March 7, 1868	30,000 00
		$226,000 00

Brought forward	$226,000 00
As above	159,000 00
Total of bonds	$385,000 00
Funded interest	38,000 00
Interest due January 1, 1871	108,853 20
Total due	$532,013 20

In hands of receiver for more than two years, and failed to pay interest; is only — miles in length, and will never pay interest.

East Tennessee and Western North Carolina Railroad Company was incorporated May 24, 1866 (see pages 260–'1, '2, and '3, Acts of 1865–'6, see section 23), by which charter of East Tennessee and Virginia Railroad Company, passed January 27, 1848, is made the charter of this company, same rights, &c. (see 1847–'8, 195, section 28 of act of 1847–'8); same provision in regard to amendment of charter by acts of the directors in Chattanooga Railroad Company. By section 10 of act of December 7, 1867–'8 (page 15 of Acts of 1867–'8), the East Tennessee and Western North Carolina railroad gets $100,000; so it is embraced in the provisions of section 15 of acts of December 7, 1867, for it has never paid its interest—that is, its interest is two years behind; $48,000 of interest is due, and $24,000 the annual amount.

BONDS DRAWN SINCE THE WAR.

April 28, 1868—To E. Simmerly, president, under Dec. 10, 1866	$150,000
July 30, " —" " " " Dec. 7, 1867	100,000
June 5, " —" " " " Dec. 16, 1868	150,000
Total	$400,000
Interest to January 18, 1871	48,000
Whole indebtedness to State	$448,000

This road runs from ——— to ———, is —— miles long, and is insolvent and worthless.

Your orator would now show your honor that most, perhaps all, of these roads are totally insolvent, unable to pay accruing interest or sinking fund, and in no condition to

pay the arrears of interest, which have already become past due, and, of course, with no reasonable hope of ever paying the principal of the bonds issued to them. Your orator insists that the failure of these companies to comply with any one of the conditions upon which State aid was rendered to them works a forfeiture of all their rights under the internal-improvement laws, and authorizes your orator to demand a sale of all the property and effects, rights, privileges, and franchises of said several companies, the proceeds of sale to be applied, first, to the extinguishment of the debt due to your orator, with interest and cost, and the surplus, if any, to the satisfaction of other debts in the order of their liens. If the sale should produce more than is required to pay the debts the stockholders would be entitled to the same *pro rata*.

Your orator claims, in any event, priority of satisfaction out of the incomes or sales of said roads for the whole of the indebtedness of said companies, as hereinbefore recited, or as the same may be found to be (and your orator reserves the right to correct errors therein, if any), over all other creditors or claimants of said roads of every nature and kind whatever. Among the claims which have been set up against said roads, or some of them, are claims for work and labor done upon or for said roads while under the control and management of receivers appointed under the act of 1852 and the acts amendatory thereof, and in some instances liens upon parts of the superstructure of said roads, such as trestles and bridges, have been claimed.

Your orator insists that the claims, however valid they may be as between the claimants and the companies, can have no force and effect as against your orator or its prior rights and liens under the internal-improvement laws.

The premises considered, your orator prays your honor that the railroad companies, corporations, and persons mentioned in the caption of this bill as defendants be made such by proper process, according to the course of the court.

Your orator also prays that all the respective stockholders of the said railroad companies, the holders of State bonds issued to such companies, the holders of the bonds of said companies, issued by them and secured by liens, pledges, or mortgages of said roads, or any part thereof, or of their property or franchises, and all creditors of said railroad companies, and all persons interested in said roads, be made defendants to this bill, by service of process on those named and by publication to those whose names and residences are unknown, according to the course of the court, and that all of the said defendants, or so many of them of the different classes as the court may deem sufficient to represent all of each class, be required to answer the allegations of this bill on oath. Your orator prays that the process of subpœna or by publication issue and be made under the act of December 21, 1870, and require the said defendants to appear at the special term of this court, to be held on the first Monday in March next, and put in such defense to said bill as they may respectively deem proper under the provisions of the said act; that all proper accounts be ordered and taken as required by said act; that in case any of such railroad companies should decline a contest with your orator in regard to a sale of the State's interest in these roads, a decree may be made accordingly and the commissioners appointed by the Legislature authorized to proceed at once to sell said interest, a specific value being put upon the State's interest in each of such roads by the decree, in pursuance of the 8th section of said act of December 21, 1870. Your orator further prays your honor to make all such rules, orders, and decrees interlocutory and final, as may be deemed necessary, in order to a final and proper adjustment of the rights of all the parties preliminary to a sale of the interest of your orator in said roads; and also to declare the exact amount of indebtedness of each of said companies to your orator and to define, as may be thought proper, what shall be the rights, duties, and

liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, bondholders, and others, respectively, as against said purchasers after such sale, under the existing laws. Your orator also prays that your honor would make a decision of any agreed case or question or matter informally submitted under the provisions of the second section of said act. Your orator also prays your honor to decree a sale of said roads, with all their property, franchises, and rights, if necessary or proper upon final hearing, or manifestly for the interest of all parties, and expressly or tacitly assented to by such parties, such sale to be made by the commissioners appointed by the Legislature, the proceeds of sale to be paid to the parties entitled under the orders and decrees of your honor, or upon the principles settled by such orders and decrees. Your orator further prays for all such other, further, and different relief as it may be entitled to.

E. H. EWING,
W. F. COOPER,
W. B. REESE,
Solicitors.

Filed January 20, 1871.

Decree Settling General Rights of Parties and Purchasers.

April Term, 1871.—6th Day of July, 1871.

STATE OF TENNESSEE
vs.
THE EDGEFIELD AND KENTUCKY RAILROAD COMPANY *et als.*

This cause was further heard on this the 6th day of July, 1871, before the Hon. E. H. East, chancellor, upon the pleadings, previous proceedings, and proof; and it appearing to the satisfaction of the court that decree has heretofore been entered in the case of all the railroad companies made defendants, except the Memphis, Clarksville and Louisville

Railroad Company and the Nashville and Northwestern Railroad Company, ascertaining and declaring the amount of the State debt against each of the said several companies for State bonds issued to said roads under the internal-improvement act of 1851–'2 and subsequent acts amendatory thereof, and that said companies are each and are wholly unable to pay the said several debts to the State or to keep down the interest semi-annually accruing thereon, or to pay any sinking fund to meet the principal of said debt at the maturity of the State bonds issued to them as aforesaid; that said several companies are, in fact, insolvent and unable to comply with the provisions of the said internal-improvement laws, designed to secure the payment of said debt, principal and interest, and have no prospect of ever being able to comply with said provisions; it further appearing that of the roads whose debts have thus been ascertained the East Tennessee and Western North Carolina Railroad Company has declined contest with the State in regard to the sale of the State's interest in its road, and a decree has been rendered accordingly for a sale of such interest by the commissioners at once; that all the residue of said companies, except the Southwestern Railroad Company, have consented to a sale of their said several roads, with all their rights, privileges, and franchises, and decrees have been entered accordingly, preference for a limited time being by such decree conceded to the said companies, respectively, and then to the stockholders or such of them as choose to join in the purchase, to become the purchasers of their said several roads at the minimum price fixed by the court, in accordance with the act of the 21st December, 1870, chapter 23, and that a decree has been made for a sale of the Southwestern Railroad Company; it further appearing that it is made the duty of this court by the said act to adjudicate and determine all questions of law and matters of controversy of whatever nature, whether of law or fact, that have arisen or may arise touching the rights and interest of the State and also of the stockholders,

bondholders, creditors, and others in said road, and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads or either of them, and what shall be the reserved rights of said companies, stockholders, and others, respectively, as against said purchasers, after such sale under the existing laws of the State; and it further appearing to the satisfaction of the court that the holders of the State bonds issued by the State to the said several companies are properly made defendants to this suit and sufficiently represented by the holders of such bonds as are made defendants by name or have come in and answered; it further appearing that the holders of bonds issued by said several companies and secured by mortgage of the road or its income or without any security by mortgage, lien, or otherwise, are also properly made defendants and represented; that the general creditors of said companies, the stockholders, and all other persons interested in said several roads or companies are also made defendants and represented, including the creditors whose claims were created by or while the roads were being held and managed under receivers appointed under the act of 1851–'2 and acts amendatory thereof, and that the court being of opinion that the statutory lien or mortgage secured by the said internal-improvement laws under which State bonds were issued to the said several companies was intended to enure and does enure only to the benefit of the State, and that the holders of said bonds have no right now and will have none at the maturity of said bonds, by way of subrogation or otherwise, under and by virtue of the said several acts and the lien or mortgage reserved and secured by them to go upon the said several companies or their roads or property for the payment of either the principal or interest of the said several State bonds, but must look exclusively to the State for payment. The court is further of opinion that neither the State of Tennessee nor any one claiming by, through, or under it will have any right to

enforce the collection of the principal or interest of the State bonds so issued as aforesaid against any purchasers who may purchase any of said roads, their franchises, &c., under the decrees in this cause, either directly or through the commissioners, if such purchaser fully complies with the terms of sale as fixed by the decrees and the acts of Assembly or agreed upon with the commissioners. The court is further of opinion that the lien of the State, to the full extent of the debt of the said several companies for the State bonds issued to them severally as aforesaid, and the unpaid interest thereon, as ascertained by the decrees in this cause, is prior and superior to the claim of all other creditors of said several companies of every nature and kind whatsoever and whether secured by mortgage, pledge, judgment, or otherwise or without any security.

The court is further of opinion that the State debt, as ascertained as aforesaid, largely exceeds in every instance the full value of the several roads upon which it is a lien, its rolling stock, and other property, rights, privileges, and franchises, and that the State may, therefore, by agreement with the said several companies, sell said road's property and franchises, in satisfaction of their said debt, at any price which may be agreed upon less than the amount of said debt, and vest the purchaser other than the companies themselves with a full, perfect, and complete title, free from the claim of stockholders, holders of State bonds, holders of mortgage bonds, creditors of every kind, and of all and every person or persons claiming an interest in said companies or roads. The court is further of opinion that the said several companies and their stockholders, who have consented to the decrees of sale as aforesaid, were competent to consent to said decrees, and that, upon sale being made under said decrees, either to the parties having the refusal for a given time as aforesaid, other than the companies themselves, or to other parties, the said companies and their stockholders will cease to have any further rights, legal or equi-

table, in or to the property, rights, and franchises so sold, and the said purchasers, other than the company, will take the road, property, and franchises, free from all claims whatsoever, except those of the State reserved by the contract of sale and the act under the provisions of which the sale is made.

(The court is further of opinion that, upon the sale of any of the franchises of either of said railroad companies by the commissioners, under the decrees in this cause and the provisions of said act of the 21st December, 1870, all the rights, privileges, and immunities appertaining to the franchise so sold under its act of incorporation and the amendments thereto, and the general improvement law of the State and the acts amendatory thereof, shall be transferred to and vest in such purchasers, who shall hold said franchises subject to all liens and liabilities in favor of the State as now provided by law, against the railroad companies, so far as may be necessary, to secure the purchase-money as aforesaid and the other rights of the State under the decrees in this cause and the said act of the Legislature.) It is therefore ordered and adjudged and decreed accordingly, and that the rights of the parties and franchises be adjudged and settled in accordance with the opinions as hereinbefore expressed. Other matters are reserved.

It is further ordered that the costs of this cause be paid out of the proceeds of the sale of the said several roads.

CAPTION.

SPECIAL TERM, 1871.—18TH DAY OF SEPTEMBER, 1871.

Special Term.

Be it remembered that on the 17th day of August, 1871, the Hon. E. H. East, chancellor, appointed a special term of the chancery court at Nashville, and on the said day gave notice in writing to the clerk of the court as follows:

IN CHANCERY, AT CHAMBERS,
NASHVILLE, *August* 17, 1871.

To Nathaniel Baxter, Jr., Clerk and Master of the Chancery Court at Nashville:

As it is necessary for the dispatch of business, I hereby appoint a special term of the chancery court at Nashville, Tennessee, to begin on Monday, September 18, 1871.

E. H. EAST, *Chancellor.*

Filed at office August 17, 1871.

N. BAXTER, Jr., *C. and M.*

And the following publication:

Chancery Court, Nashville. Special Term.

Under the authority vested in me by sections 3940 and 3941 of the Code of Tennessee, I hereby appoint a special term of the chancery court at Nashville, to begin on the eighteenth day of September, 1871.

AUGUST 17, 1871.

EDWARD H. EAST, *Chancellor.*

Decree Settling Rights of Purchasers of State's Interest, &c.

April Term, 1871.—20th Day of September, 1871.

STATE OF TENNESSEE

vs.

THE EDGEFIELD AND KENTUCKY RAILROAD COMPANY *et als.*

This cause came on further to be heard on this 20th day of September, 1871, before the Hon. E. H. East, chancellor, &c., upon the previous proceedings and decrees; and it appearing to the court that by decree in this cause rendered on the 6th day of July, 1871, in Minute Book F, p. 402, the right was given for thirty days from that date to the Memphis, Clarksville and Louisville Railroad Company to pur-

chase the entire railroad of said company, including the right of way, grading, bridges, machinery, iron, rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company and necessary for its business, and all depots and depot stations, its franchises and property, at the minimum sum of one million seven hundred thousand dollars, in bonds of the State, with the coupons falling due on the first of January, 1871, and subsequent coupons attached, upon the terms and subject to the stipulations and conditions of the act of 21st December, 1870, and that if said company should fail to consummate the purchase within the time limited such of the stockholders of said company as might choose to unite for the purpose, and such other persons as might be associated with them, should, for thirty days after the expiration of said first thirty days, have the right to purchase said road, its property, rights, and franchises as aforesaid, at the same price and upon the same terms and conditions; and it appearing that more than sixty days from the date of said decree have expired, and that neither said company nor any of its stockholders, nor any person associated with them, have made said purchase, and it being admitted by the counsel for said company and its stockholders that both the company and stockholders have duly and formally declined to make said purchase, and it being further admitted that said company has never paid any part of the interest due upon the bonds received from the State; has contracted debts to the amount of many thousands of dollars by issuing second-mortgage bonds and, perhaps, otherwise; that said indebtedness has been constantly increasing from year to year, the income of the road not being more than sufficient to pay the expenses of operating the same, and that there is no prospect of the company ever being able to pay any part of the debt due the State; it further appearing that the original debt due the State was fifteen hundred and eighty-two thousand dollars ($1,582,000), and has been accumulating

for the causes aforesaid until on the first day of January, 1871, said company was justly indebted to the State in the sum of two millions four hundred and fifty thousand one hundred and twenty-five dollars and ninety-two cents ($2,450,125.92) for bonds issued by the State and interest thereon, and in the further sum of ($499,670) four hundred and ninety-two thousand six hundred and seventy dollars for rolling stock purchased from the Government of the United States (subject to all proper credits, if any); it being further admitted that said company is hopelessly insolvent, and that all the property, rights, and franchises aforesaid, and which, as heretofore decreed, are subject to the lien of the State for said bonds, are not sufficient in value, by many thousands of dollars, to pay the amount due in said bonds, the court is of opinion, and so decrees, that under the circumstances which have happened the said company having utterly failed to comply with any of the essential conditions of the internal-improvement laws under which said bonds were issued, the court has power not only to sell the debt, mortgages, and interest of the State in said road, but also the road itself, with all its rights, property, and franchises aforesaid, and especially as said company and stockholders hereby consent thereto.

The court is further of opinion from the proof already on file that the minimum value of said road, its property, rights, and franchises as aforesaid, and of the debt, mortgage, and interest of the State in the same, is the sum of one million seven hundred thousand dollars, in bonds of the State, with the coupons of the first of January, 1871, and subsequent coupons attached, and the minimum value thereof is hereby fixed at that sum. It is therefore ordered, adjudged, and decreed by the court that said road be turned over to Hon. R. J. McKinney, A. Wright, F. B. Fogg, D. W. C. Senter, Governor; T. H. Butler, secretary of state, and Ed. R. Pennebaker, comptroller, the commissioners of railroads for the State of Tennessee, and who

are hereby appointed special commissioners of this court, and they are hereby authorized and empowered to sell said road, its property, rights, and franchises aforesaid, as well as the debt, mortgage, and interest of the State, to any one and in any manner, publicly or privately, and at any price they may choose, not less than the minimum aforesaid, and to make their report to this court for such further action as may be necessary or proper.

It is further understood and agreed that the State will indemnify and save harmless the purchaser from liability for the debt to the United States as aforesaid, less the amount due from the United States up to the time of sale for carrying the mails or other freight, of which the State is to have the benefit. The purchaser shall have a credit on the last two installments of the purchase-money for all sums that may be retained by the United States from said purchaser on account of said debt, such credits to be allowed in bonds of the State at the then value of such bonds if not otherwise paid by the State; and unless the State shall have settled said debt to the satisfaction of the United States by the time said two installments mature, the purchaser may pay the balance due to the United States on said debt and have a credit on said installment for the amount thereof, together with the difference between the value of said sum if paid in cash to the United States and the then value of State bonds. On the other hand, the said purchaser is to save harmless and fully indemnify the State by a guaranty or obligation satisfactory to the commissioners from all liability for the claims, debts, or demands of second-mortgage bondholders and all other persons having or claiming to have debts or demands against the said company, except the claims of any of the holders of the bonds issued by the State to said company or the bonds issued to fund the interest thereon, but to include those claiming to hold demands created by or during the contract of the receivers of said road appointed by the State; but the said purchaser is to have all

the defenses against said debt aud demands that would obtain in favor of the State had no sale been made. It is further decreed by the court that the sale shall carry with it to the purchaser all debts and demands due the company and all surplus profits, if any, in the hands of the receiver.

And it further appearing that it is made the duty of the court by said act to adjudicate and determine all questions of law and matters of controversy, of whatsoever nature, whether of law or fact, that have arisen or may arise touching the right and interest of the State, and also of the stockholders, bondholders, creditors, and others interested in said road; and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said road and what shall be the reserved rights of said company, stockholders, and others, respectively, as against the purchaser, after such sale under the existing laws of the State; and it further appearing to the satisfaction of the court that the holders of the State bonds issued by the State to said companies are properly made defendants;

It further appearing that the holders of the bonds issued by said company and secured by mortgage of the road or its income, or without any security, by mortgage, lien, or otherwise, are also properly made defendants and represented; that the general creditors of said company, the stockholders, and all other persons interested in said road or company are also defendants and represented, including the creditors whose claims were created by or while the road was being held and managed under receivers appointed under the act of 1851–'52 and acts amendatory thereof, and the court being of opinion that the statutory lien or mortgage secured by the said internal-improvement law, under which State bonds were issued to said road and company was intended to enure only to the benefit of the State, and that the holders of said bonds have no right now and will have none at maturity of said bonds, by way of subrogation

or otherwise, under and by virtue of said several acts and the lien or mortgage reserved and secured by them, to go upon said company or its road, property, rights, or franchises for payment of either the principal or interest of said State bonds, but must look exclusively to the State for payment:

The court is further of opinion that neither the State of Tennessee nor any one claiming by, through, or under it will have any right to enforce the collection of the principal or interest of the State bonds so issued as aforesaid against any purchaser who may purchase said company's road, its property, rights, and franchises, under the decrees in this cause, either directly or through the commissioners, if such purchaser fully complies with all the terms of sale as fixed by the decree and the acts of Assembly, or as agreed upon with the commissioners, nor to subject said road, its property, rights, or franchises, to seizure or sale for the payment of said bonds and interest.

The court is further of opinion that the lien of the State, to the full extent of the debt of said company for the State bonds issued to it and interest thereon as aforesaid, as ascertained by this decree, is prior and superior to the claim of all other creditors of said company of every nature and kind whatsoever and whether secured by mortgage, pledge, judgment or otherwise, or without any security.

The court is further of opinion that the State debt, as ascertained as aforesaid, largely exceeds the full value of the said company's road, its rights, property, and franchises, together with the stock and the other privileges upon which it is a lien, and that the State may therefore, by agreement with said company, its directors and stockholders, or without such agreement, have a decree to sell said company's road, its property, rights, and franchises, and the debt, mortgage, and interest of the State in the same at any price that may be agreed on less than the amount of said debt, and vest the purchaser with a full, perfect, and complete title,

free from the claims of stockholders, holders of State bonds, holders of mortgage bonds, creditors of every kind and description, and of all and every person or persons claiming an interest in said company or road. The court is further of opinion that the said company, its directors and stockholders who have consented to this and previous decrees as aforesaid, were competent to consent to the same, and that the counsel for the State were competent to consent for the State, and that upon a sale being made under this decree the said company and its stockholders will cease to have any further rights, legal or equitable, in and to said company's road, its rights, property, and franchises, so sold, and the said purchaser will take and be vested with all the title and interest of said company and its stockholders in and to said road, its property, rights, and franchises, free from all claims whatsoever, except those of the State, reserved by the contract of sale and the act under the provisions of which the sale is made.

The court is further of opinion that upon a sale of the franchises of said railroad company by the commissioners under this decree and the provisions of the said act of 1st December, 1870, all the rights, privileges, and immunities appertaining to the franchise so sold under its act of incorporation and the amendments thereto and the general internal-improvement law of the State and acts amendatory thereof will pass and be transferred to and vested in such purchaser, and the purchaser will hold said franchises subject to all liens and liabilities in favor of the State as are now provided by law against the railroad companies so far as may be necessary to secure the purchase-money as aforesaid and the other rights of the State under the decrees in this cause and the said act of the Legislature.

The court is of further opinion and so decrees, adjudicates, and determines that the purchaser, inasmuch as under this decree, he will also purchase the debt, mortgage, and interest of the State as aforesaid, will, independent of his pur-

chase of the company's road, its rights, property, and franchises as aforesaid, have the right to take immediate and exclusive possession of said road, its rights, property, and franchises aforesaid, and to use and operate the same as a railroad, with all the rights and powers of the original charter of said company and amendments thereto, until the whole amount of said debt and interest now due to the State as above decreed and the interest hereafter to become due on the same shall be fully paid to the purchaser, and as purchaser of the road, its rights, property, and franchises, he will be entitled to own, use, and operate said road with all the powers and franchises of the original charter until said charter shall have expired.

It is therefore ordered, adjudged, and decreed accordingly, and that the rights of the parties and purchaser be adjudged and settled in accordance with the opinions as hereinbefore expressed. Other matters are reserved.

It is further ordered that the costs of this branch of the cause be paid out of the proceeds of the sale of said road, &c.

Ordered that court adjourn to Thursday, September 21st, 1871, at 9 o'clock a. m.

E. H. East,
Chancellor.

Decree Confirming Sale of Knoxville and Kentucky Railroad.

October Term, 1871.—30th Day of October, 1871.

State of Tennessee
vs.
Edgefield and Kentucky Railroad Company *et als.*

Be it remembered that this cause coming on this 30th day of October, 1871, to be further heard, before the Hon. E. H. East, chancellor, &c., upon the report of the commissioners of the State in regard to the sale of the Knoxville and Kentucky railroad and the Cincinnati, Cumberland Gap and

Charleston railroad under the decrees heretofore rendered in this court in regard to these roads, which report of the commissioners is as follows:

To the Hon. E. H. East, chancellor, &c.:

The undersigned, commissioners under an act of the General Assembly of the State of Tennessee and under the orders and decrees of your honorable court, in the case of the State of Tennessee *vs.* The Edgefield and Kentucky Railroad Company and others, to sell the delinquent railroads, in addition to their former report, beg leave to report that, having heretofore failed to get such bids for the railroads not reported as sold as they thought they ought to accept, they advertised in the newspapers for sealed bids to be made for said railroads on or before the 7th day of October, at which time the commissioners proposed to meet at the capitol and consider of the bids received by them. Accordingly, on the 7th day of October and succeeding days, the undersigned commissioners met in the capitol, and among the various bids received by them they beg leave to report that for the Knoxville and Kentucky railroad Messrs. W. B. Johnston and his associates offered to raise their former bid for this railroad to the sum of three hundred and fifty thousand dollars in the bonds of the State, with coupons of January 1st, 1871, and subsequent coupons attached, payable according to the law and the decree of your honorable court in regard to said road. Under all the circumstances surrounding this road the undersigned commissioners feel it best for the interest of the State to accept of this offer, it being the highest and only bid made for said road. They therefore report said Knoxville and Kentucky railroad as sold to Messrs. W. B. Johnston and others, and that they paid to the undersigned the one-fourth of said price in bonds and coupons of the State, to wit, the sum of eighty-seven thousand five hundred dollars, and have executed a bond, with approved security,

for the payment of the other three-fourths of said three hundred and fifty thousand dollars, in accordance with the act of the Legislature and decrees of the court.

The commissioners would further report that for the Cincinnati, Cumberland Gap and Charleston railroad Messrs. Charles M. McGhee, R. T. Wilson, and their associates offered the sum of three hundred thousand dollars in bonds of the State, with coupons of January 1st, 1871, and subsequent coupons attached. As this was the highest and only bid ever made to the commissioners for this road, although not the minimum price of said road as fixed in your honor's decree, yet, as the weight of evidence taken in regard to the value of this road would show that the minimum price may have been fixed too high, the commissioners felt it to be their duty to accept of this offer of Messrs. C. M. McGhee, R. T. Wilson, and others, and therefore report said Cincinnati, Cumberland Gap and Charleston railroad as sold to said McGhee, Wilson, and associates for $300,000 in bonds and coupons, as directed in your honor's decree. The commissioners would further report that said McGhee, Wilson & Co. paid and delivered to them the one-fourth of said bid, viz., seventy-five thousand dollars, in bonds of the State, with first January, 1871, coupons and subsequent coupons attached, and executed and delivered to the commissioners a bond, with approved security, for the payment of the other three-fourths of said price, in accordance with the act of the Legislature and the decree of the court.

The undersigned would herewith submit the proposition or bids of Messrs. Johnston & Co., McGhee, Wilson, and others, and the bonds executed for the deferred payments in both of said railroads reported as sold above, and ask that your honor would have them spread upon the minutes of your court, and that decrees be rendered confirming to said purchasers all the interest in said railroads in accordance with your honor's decrees ordering the sale of the same.

All of which is respectfully submitted.

R. J. McKINNEY.
T. H. BUTLER,
Secretary of State.
ED. R. PENNEBAKER,
Comptroller.

I was not in office when these bids were accepted, but my predecessor and associates having made the negotiation, I approve it, and have received the bonds as stated.

JOHN C. BROWN, *Governor.*

(EXHIBIT No. 1 TO REPORT.)

NASHVILLE, *October 10th*, 1871.

To the Commissioners for State of Tennessee for the Sale of Delinquent Railroads.

GENTS: We hereby propose to give to you, for the Knoxville and Kentucky railroad, its franchises and privileges, including the State's interest, three hundred and fifty thousand dollars in bonds of the State of Tennessee, with the coupons maturing January 1st, 1871, and subsequent thereto attached, paying one-fourth of the amount within ten days and executing the proper bond for the deferred payments, as provided by law, within thirty days from date. The last condition is asked for from the fact that some time will be required to procure the names of our associates to the bond.

W. B. JOHNSTON.
C. M. McGHEE.

Endorsement on the Above.

Ordered by the board that the within bid be accepted if payments are made in compliance with the decrees of the court.

OCT. 11, 1871.

ED. R. PENNEBAKER,
Secretary, &c.

Bond.

These presents witness that W. B. Johnston, C. M. McGhee, C. A. Nutting, Alfred Austell, Joseph E. Brown, as principals, and W. T. Walters, H. B. Plant, W. C. Morrell, as securities, are held and firmly bound to the State of Tennessee in the penal sum of three hundred and fifty thousand dollars; for the payment of which, well and truly to be made, they bind themselves, their heirs and personal representatives and successors, this 10th day of October, 1871.

The condition of this obligation is such that whereas, under the decrees of the chancery court, at Nashville, in the case of The State of Tennessee *vs.* The Edgefield and Kentucky Railroad Company and others, and under a contract made with the commissioners appointed by an act of the General Assembly of the State of Tennessee to sell and dispose of delinquent railroads, the above-bound principals have this day purchased from said commissioners the Knoxville and Kentucky railroad, its property and franchises, as set out in the decrees in said cause relating thereto, and upon the terms and conditions in said decrees and the contracts prescribed, at the price of three hundred and fifty thousand dollars, payable in lawful coupon bonds of the State of Tennessee, with the coupons falling due on the first day of January, 1871, and all the subsequently accruing coupons attached, one-fourth of said bonds, with the agreed coupons, to be paid at the time of the purchase, which has been done, and the other three-fourths, with the coupons as aforesaid, to be paid in three equal installments within one, two, and three years respectively from the date of said sale, but with the privilege, in lieu of such of said coupons of said bonds as may be past due at the time the several installments fall due, of paying in money an amount equal to the amount called for by such coupons—that is, an amount equal to the interest accruing semi-annually—upon the remaining three-

fourths of said bonds, to be delivered thereafter, from six months previous to the 1st January, 1871, until the whole amount shall be delivered, said interest to be paid as the coupons mature:

Now, therefore, should the said W. B. Johnston, C. M. McGhee, C. A. Nutting, Alfred Austell, Joseph E. Brown, principals, pay to the State of Tennessee the several installments of purchase-money as aforesaid and, moreover, comply with the terms, stipulations, and conditions of said decrees in said cause in the contract prescribed, then this obligation to be void; otherwise to be and remain in full force and virtue.

W. B. JOHNSTON. [L. S.]
C. A. NUTTING. [L. S.]
JOSEPH E. BROWN. [L. S.]
ALFRED AUSTELL. [L. S.]
C. M. MCGHEE. [L. S.]
W. T. WALTERS, *Security.* [L. S.]
H. B. PLANT, *Security.* [L. S.]
W. C. MORRELL, *Security.* [L. S.]

Acknowledged.

PENNEBAKER. [L. S.]

Signed in the presence of B. R. Freeman, commissioner for the State of Tennessee in Georgia.

STATE OF GEORGIA,
COUNTY OF FULTON, CITY OF ATLANTA.

Be it remembered that on the 18th day of October, 1871, in the city and county aforesaid, before me, B. R. Freeman, a commissioner, residing in said county, duly appointed and commissioned by the Governor of the State of Tennessee to take the acknowledgment and proof of the execution of deeds and other instruments in writing, under seal [or not] to be used or recorded in said State of Tennessee, and to take depositions, &c., personally appeared W. B. Johnston, C. A. Nutting, Jos. E. Brown, and Alfred Austell, principals,

and W. T. Walters, H. B. Plant, and W. C. Morrell, as security, who are personally known to me to be the persons whose names are subscribed to the foregoing bond as having executed the same, and acknowledged that they had executed the same for the uses and purposes therein expressed.

In witness whereof I hereunto set my hand and affix my official seal, as commissioner of the said State of Tennessee, at my office, in the city of Atlanta and State aforesaid, the day and date first above written.

[L. S.] B. R. FREEMAN,
Commissioner for Tennessee in Georgia.

NASHVILLE, TENN., *Oct. 10th*, 1871.

To the Commissioners for the Sale of Delinquent Railroads for the State of Tennessee:

I hereby propose, upon the part of myself, R. T. Wilson, and associates, to pay ($300,000) three hundred thousand dollars in bonds of the State of Tennessee, with January, 1871, coupons attached, for the Morristown, or Cincinnati, Cumberland Gap and Charleston railroad. For and in consideration I expect a full and perfect title to the road, including the State's interest, franchises, and privileges. I will, within a few days, pay one-fourth of the amount and execute proper bond for deferred payments. I will require sufficient time to allow the bonds for the first payment to be sent me from New York.

Yours respectfully, C. M. McGHEE.

NASHVILLE, *Oct. 10th*, 1871.

The commissioners accept the proposition of C. M. McGhee and R. T. Wilson & Co., provided the same will be complied with in ten days.

By order of the board:

ED. R. PENNEBAKER,
Secretary Board of Commissioners.

Bond.

These presents witness that Richard T. Wilson and Charles M. McGhee, principals, and Joseph Jaques and R. C. Jackson are held and firmly bound to the State of Tennessee in the penal sum of six hundred thousand dollars ($600,000); for the payment of which, well and truly to be made, they bind themselves, their heirs, assigns, and personal representatives, this the 18th day of October, 1871. The conditions of this obligation are such that whereas, under the decrees of the chancery court at Nashville, in the case of the State of Tennessee *vs.* The Edgefield and Kentucky Railroad Company and others, and under a contract made with the commissioners by an act of the General Assembly of the State of Tennessee to sell and dispose of the delinquent railroads, the above-bound Richard T. Wilson and C. M. McGhee have this day purchased from said commissioners the Cincinnati, Cumberland Gap and Charleston railroad, with all its property, franchises, and fixtures, as set out in the decrees in said cause relating thereto, and upon the terms and conditions in said decrees and the contract prescribed, at the price of three hundred thousand dollars, payable in the lawful coupon bonds of the State of Tennessee, with the coupons falling due on the first day of January, 1871, and all the subsequently accruing coupons attached, one-fourth of said bonds, with the agreed coupons, to be paid at the time of the purchase, which has been done, and the other three-fourths, with the coupons as aforesaid, to be paid in three equal installments within, one, two, and three years, respectively, from the date of said sale, but with the privilege, in lieu of such coupons of such of said bonds as may be past due at the time the several installments fall due, of paying in money an amount equal to the amount called for by such coupons—that is, an amount equal to the interest accruing upon the remaining three-fourths of said bonds to be delivered

thereafter from six months previous to the first day of January, 1871, until the whole amount shall be delivered—and interest to be paid as the coupons mature:

Now, therefore, should the said Richard T. Wilson and Charles M. McGhee pay to the State of Tennessee the several installments of purchase-money as aforesaid within the time prescribed as above and payable as aforesaid and, moreover, comply with the terms, stipulations, and conditions of said decrees in said cause and in the contract prescribed, then this obligation to be void, but otherwise to remain in full force and virtue.

C. M. McGHEE.
R. T. WILSON.
JOSEPH JAQUES.
R. C. JACKSON.

Witness:
R. J. McKINNEY,
As to Messrs. Wilson, Jaques, and Jackson.

Acknowledged.

ED. R. PENNEBAKER,
Comptroller.

Endorsement upon the Foregoing Bond.

The within bond has been examined by us and is in proper form.

OCT. 19, 1871.

W. F. COOPER,
W. B. REESE,
Solicitors for State.

Which report, being seen, heard, and fully understood and not excepted to, is in all things confirmed; and, it appearing to the satisfaction of the court that the sales of the Knoxville and Kentucky and the Cincinnati, Cumberland Gap and Charleston railroads, with their property and fran-

chises, have been made by the commissioners, in conformity with the previous decrees, it is therefore ordered, adjudged, and decreed that these said sales be confirmed, and that the commissioners retain the bonds and collect the residue of the purchase-money as the same falls due (and, when the same is fully paid, make title to the purchasers according to the terms of the contract and the former decrees of this court). It is further ordered and decreed that the said purchasers be at once put into possession of these said roads severally bought by them, with all the property, franchises, and effects so bought by them as aforesaid, and for this purpose, if necessary, the clerk and master is hereby ordered and directed, upon the application of either of said purchasers, to issue a writ of possession or writs of possession, directed to the sheriffs of the several counties in this State through which the said roads may run or in which any part thereof or of the property sold may be, directing said sheriff to put the purchasers into possession of such property at once and make return of his action to this court. It is further ordered, adjudged, and decreed that all the acts of the commissioners in reference to said sales be, and the same are hereby, approved, sanctioned, and ratified by the court.

It is further ordered, adjudged, and decreed that the State bonds and coupons secured by the commissioners as the consideration for the sale of said roads be vested in the State as its property, and be held by them and disposed of by said commissioners, as they are authorized to be held and disposed of by the acts of the General Assembly under which they were appointed and authorized to act, by cancellation or otherwise. "The case will be retained for the purpose of any further orders or decrees necessary to protect and effectuate the rights of the purchasers or of the State as against the purchasers or the property and effects sold, with leave to the parties to apply for such further proceedings whenever necessary."

The decrees referred to in the former part of this decree

under which said roads are sold are, in regard to the Knoxville and Kentucky railroad, those of the 9th of March, 1871, in Book S, pages 522 and 523, and of the 13th of March, 1871, on pages 539, 540, 541 of Book S, and, in regard to the Cincinnati, Cumberland Gap and Charleston Railroad Company, are the decrees of the 25th of March, 1871, on page 593 of Book S, and the decrees of April 8th, 1871, on page 22 of Book T; and the rights of the said purchasers, respectively, of said railroads are in this cause, on the 6th day of July, 1871, set forth and decreed by the court on pages 369, 370, 371, and 372 of Book T, to which direct reference is made as to the rights of said purchasers of said railroads under this decree and as a further declaration of the rights of the purchasers of said railroads. Inasmuch as the State, upon the completion of the purchases, will have no further claims against said purchasers, it is ordered and decreed by the court that the debt, mortgage, and interest of the State in said roads, respectively, as heretofore ascertained by decrees in this cause, be transferred to and vested in said purchasers, respectively, with all the rights set forth in the decree rendered in this cause on the 20th of September, 1871, and entered in Book T, pages 494, 495, 496, 497, 498, 499, declaring the rights of the purchasers of the State's interest in the Memphis, Clarksville and Louisville Railroad Company.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 246.

P. P. PICKARD, COMPTROLLER, &c.,

vs.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

Supplemental Appendix to Brief of William M. Baxter, Solicitor for Appellee.

LAWS OF TENNESSEE.

Acts 1849–'50, Chapter LXXVI (page 239).

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That for the purposes of establishing a communication by railroad between the cities of Nashville and Louisville, in the State of Kentucky, through the town of Gallatin, in Sumner county, commencing on the north bank of Cumberland river, at some central or convenient point to the city of Nashville, the formation of a company, to be called the Nashville and Louisville Railroad Company, is hereby authorized, which, when formed, shall have cor-

porate existence in each of the States aforesaid: *Provided*, That said company shall have the privilege of crossing said river and conveying to the city from its depot on the north side of the river freights and passengers in cars drawn by animal power.

* * * * * * *

SEC. 4. That as soon as the time for receiving subscriptions as aforesaid shall have expired the said commissioners shall, respectively, deposit all the money so received by them in some incorporated bank, redeeming its notes in specie in the State where the notes shall have been received, to the credit of the Nashville and Louisville Railroad Company, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a central commission, to be composed of the following persons: John J. White, of Gallatin; John G. Rogers, of Glasgow; C. A. Wickliffe, of Bardstown; Neill S. Brown, of Nashville, and James Guthrie, of Louisville, who, or a majority of whom, shall meet at the town of Glasgow, in the State of Kentucky, on the first Monday in November, 1850, and ascertain the whole number of shares taken in said company and publish the same in some newspaper in the city of Nashville and in the city of Louisville on or before the third Monday in November, 1850; and if the number of twenty thousand shares shall have been subscribed, on each of which there shall have been paid the sum of five dollars, the Nashville and Louisville Railroad Company shall be regarded as formed, and the said central commission, or a majority of them, shall sign and seal four duplicate declarations to that effect, with the names of all the subscribers appended, and cause one of these duplicates to be deposited in the offices of the secretaries of the States of Tennessee and Kentucky; and thenceforth and from the day of closing the books of subscription as aforesaid the said subscribers of the stock shall form one body politic and corporate in

deed and in law, in the States aforesaid, by the name and for the purposes aforesaid.

* * * * * * *

SEC. 40. That the capital stock in the said company, the dividends thereon, and the roads and fixtures, depots, workshops, warehouses, and vehicles of transportation belonging to the said company shall be forever exempt from taxation in each and every of the said States of Tennessee and Kentucky, and it shall not be lawful for either of the said States, or any corporate or municipal police or other authority thereof, or of any town, city, county, or district thereof to impose any tax on such stock or dividends, property or estate: *Provided*, The stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with and at the same rate as money at interest or interest thereon, and when the State shall impose a tax on the dividends declared in favor of the stockholders of the company the tax shall extend only to such proportion of the said dividends and capital stock as the part of the road in that State shall bear to the whole road from the profits of which the said dividends have arisen, which tax, when imposed, shall be retained by the company out of said dividends and paid to the State; but no tax shall be imposed so as to reduce the part of the dividends to be received by the stockholders below the legal interest of the State.

* * * * * * *

SEC. 51. That this act shall become a law whenever the State of Kentucky may enact the same for the same purpose, with such modifications and amendments as they may deem right, not inconsistent with the provisions hereof: *Provided, however*, That if the said State of Kentucky should not enact or co-operate in this charter during the present year, when the same is enacted, the time shall be allowed

thereafter as is now allowed to do and perform certain things required by the provisions of this act.

LANDON C. HAYNES,
Speaker of the House of Representatives.
JOHN F. HENRY,
Speaker of the Senate.

Passed February 9, 1850.

Acts 1853–'54, Chapter CCCI (page 645).

An act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That William Houston, Hu. Graham, Walter R. Evans, Thomas J. Johnson, Frank Fulkerson, L. A. Garrett, William M. Cocke, Thomas W. Turley, L. D. Franklin, Milton Shields, Obediah Boaz, and William McFarland, and their associates, who shall be stockholders in a railroad company, and their successors, under the name and style of the Cincinnati, Cumberland Gap and Charleston Railroad Company, are hereby declared to be a body corporate and politic under the laws of Tennessee, with succession for ninety-nine years and a common seal, with a capacity to sue and be sued, receive and enjoy, to them and their successors, property and estate of whatever value and quantity, and the same to alien, transfer, and dispose of so far as may be necessary to carry into effect the main object of this charter, which is hereby declared to be the construction, use, and maintenance of a railroad from Cincinnati, on the Ohio river, or some point nearer Cumberland Gap than Cincinnati, already having railroad connection therewith, through Cumberland Gap and the valley of the French Broad river, near Paint Rock, the southern boundary line of the State of Tennessee, to Charleston, South Carolina, or some point nearer Cumberland Gap than

Charleston, already having railroad communication with Charleston.

SEC. 2. *Be it further enacted*, That said company shall have power to unite with any company chartered or that may be chartered by the Legislature of the State of Kentucky for the construction of a railroad from Cincinnati, Paris, Louisville, Lexington, or any other point nearer Cumberland Gap than Cincinnati, to the boundary line of the State of Tennessee at Cumberland Gap, to unite with the railroad from Charleston as aforesaid; and that said company shall have power to unite with any company that has been or may be chartered by the Legislature of the State of North Carolina or South Carolina, for the construction of a railroad from Charleston, South Carolina, or some point nearer Cumberland Gap than Charleston, to the boundary line of the State of Tennessee, to unite with the said road from Cincinnati, Paris, Louisville, or Lexington as aforesaid, and to consolidate said railroads and the stock of said companies in such manner and upon such terms as said company may deem best.

SEC. 3. *Be it further enacted*, That the capital stock of said company shall be five hundred thousand dollars, to be divided into shares of twenty-five dollars each, and said company shall have power to increase the capital stock of said company to two millions of dollars: *Provided*, That at all the meetings of said stockholders where a vote is to be taken each stockholder shall be entitled to vote in person or by proxy, and in the election of directors and all other elections which may come before the stockholders the vote shall be taken according to the provisions of the charter of the East Tennessee and Virginia Railroad Company: *Provided further*, That whenever fifty thousand dollars of said stock is subscribed said company may organize and elect a board of directors, who may elect a president from their number, as prescribed in the East Tennessee and Virginia Railroad Company, who, when elected, shall be president of the board

of directors and of the company; and no person shall be president or director of said company unless he is the owner of at least twenty-five shares of the capital stock of said company, which he shall have held at least three months previous to his election, except the first.

SEC. 4. *Be it further enacted*, That the aforesaid William Houston, Hu. Graham, Walter R. Evans, Thomas J. Johnson, Frank Fulkerson, L. A. Garrett, William M. Cocke, Thomas W. Turley, L. D. Franklin, Milton Shields, Obediah Boaz, and William McFarland be, and they are hereby, constituted a board of commissioners, a majority of whom may act, to manage all the affairs of said company, until it shall be organized by the election of a board of directors, as aforesaid, to procure subscription of the stock by themselves, or by the appointment of agents for that purpose, or in such manner as they may deem best, to provide for experimental surveys of routes for said road, or any part thereof, and for the payment of the same and for procuring said subscription of stock out of such call on the stock subscribed for as they may deem advisable, according to the provisions of the charter of the East Tennessee and Virginia Railroad Company: *Provided*, They shall not be required to require the payment of any part of the stock subscribed for at the time the same is subscribed for and taken.

SEC. 5. *Be it further enacted*, That said company shall have the right, when necessary, to construct said road across or along any public road or water-course: *Provided*, That said company shall not obstruct such public road or water-course; and should said company run said road upon the line of any turnpike road it shall and may be lawful for said company to make such contract or arrangement with said turnpike company as may be deemed best by the parties.

SEC. 6. *Be it further enacted*, That whenever said company shall have completed that part of said road from Cumberland Gap to the East Tennessee and Virginia Railroad, or to the southern boundary line of the State of Tennessee,

they shall have all the rights and privileges conferred by this charter for the period of ninety-nine years.

SEC. 7. *Be it further enacted*, That the commissioners, or the directors of said road, shall have the power to open books of stock at any time or place they may think proper, and that said company shall have ten years to complete said road.

SEC. 8. *Be it further enacted*, That said company shall be and they are hereby vested with all the rights, powers, and privileges and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except otherwise provided for in this charter.

SEC. 9. *Be it further enacted*, That the Cincinnati, Cumberland Gap and Charleston Railroad Company shall have the power to increase the capital stock of said company to an amount sufficient to complete said road, and that said company be, and they are hereby, authorized to borrow, on the credit of said company, a sum of money not exceeding one million of dollars, and may issue the bonds of said company for the amount borrowed, payable at such times and bearing such rate of interest as said company may determine, and shall have full power to secure the payment of said bonds by a mortgage or deed of trust on the road, property and franchise of said company: *Provided*, That nothing herein contained shall be so construed as to effect or impair the lien which the State may have on the road, property, or stock of said company by any act of the Legislature of this State.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

Passed November 18, 1853.

Acts 1853–'54, Chapter CCCXXIV (page 763).

* * * * * * *

SEC. 6. *Be it enacted*, That any two or more of said board of commissioners shall be, and they are hereby, authorized to open books for the subscription of stock for said road at any time and place they may deem best or proper, and shall be required to report the same to any regular meeting of said board; and said Cincinnati, Cumberland Gap and Charleston Railroad Company shall be, and they are hereby, vested with all the rights, powers, and privileges and subject to all the restrictions and liabilities of the East Tennessee and Virginia Railroad Company, except otherwise provided in this act and the act this is intended to amend.

* * * * * * *

Acts 1855–'56, Chapter 49 (page 55).

An act to amend an act entitled "An act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That an act to charter the Cincinnati, Cumberland Gap and Charleston Railroad Company, passed November 18, 1853, shall be so amended that, whenever said railroad company shall have subscribed in *bona fide* stock an amount sufficient to grade said railroad from or near Paint Rock, the southern boundary line of the State, to its intersection with the East Tennessee and Virginia railroad at Morristown, or from Cumberland Gap, the northern boundary line of the State, to the East Tennessee and Virginia railroad, they shall have all the rights, powers, and privileges conferred by this charter for the period of ninety and nine years, and shall be entitled to all the benefits of State aid granted to said road by existing laws.

* * * * * * *

Acts 1859–'60, Chapter 21 (page 171).

SEC. 3. *Be it further enacted*, That the first section of an act passed February 11th, 1852, entitled An act to establish a system of internal improvements in this State, and subsequent acts extending the provisions of said act to the Cincinnati, Cumberland Gap and Charleston Railroad Company be so amended that whenever said railroad company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said acts, from Morristown to the French Broad river, and whenever stock is subscribed sufficient to grade the whole line of said road from Morristown to Paint Rock, at the North Carolina line, it shall be the duty of the Governor to issue bonds of the State to the company, as required in said acts: *Provided*, Nothing in this act shall in any event be construed as extending any additional State aid to said company further than has been extended to it by previous acts of the General Assembly of the State.

* * * * * * *

Acts 1870–'71, Chapter XXIII (page 28).

SEC. 10. *Be it further enacted*, That upon the sale of any of the franchises of either of the railroad companies by the commissioners under the provisions of this act all the rights, privileges, and immunities appertaining to the franchise so sold under its act of incorporation and the amendments thereto, and the general improvement law of the State and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the State as now provided by law against the railroad companies.

* * * * * * *

Opinion of Circuit Court in 24 Fed. Rep., p. 614.

EAST TENNESSEE, V. AND G. R. R. CO.
vs.
PICKARD, *Comptroller.*

(Circuit Court, E. D. Tennessee, May, 1885.)

1. *Taxation—Exemption of Property of Corporations from Taxation—Validity—Impairment of Contracts.*—Legislatures, unrestrained by some constitutional limitation, have full power to provide, in an act creating a corporation, for an exemption of its property from taxation; and such a provision in the charter of a corporation constitutes a contract which the State may not subsequently impair.

2. *Same—Exemption Granted by Reference to Prior Acts.*—By its charter and other acts to which it refers, the property of the Cincinnati, Cumberland Gap and Charleston Railroad Company was exempted from taxation; and by force of the legislative and judicial action, detailed in the opinion, said exemption passed with the property and became vested in complainant.

4. *Same—Judicial Sale of Vested Franchise.*—The Legislature of Tennessee had constitutional authority after 1870 to provide by law a remedy whereby an outstanding vested franchise, including, among other privileges, an immunity from taxation, could be subjected to a judicial sale for the payment of the just debts of its owner and for the transfer of the same in connection with a conveyance of the property to which it was appurtenant to a purchaser.

In equity.

W. M. Baxter, for complainant.
B. J. Lea, att'y gen., for the State.
Marks & Vertrees, for defendant.

BAXTER, *J.:*

The complainant seeks by its bill in this case to enjoin the collection of taxes assessed against that portion of its property formerly belonging to the Cincinnati, Cumberland Gap and Charleston Railroad Company on the ground that it is exempt from taxation. If the exemption claimed exists it arises under the legislation and judicial proceedings to be

hereinafter referred to and considered. The act of January 27, 1848, entitled "An act to incorporate the East Tennessee and Virginia Railroad Company," exempts all of its property, except slaves, from taxation for twenty years from and after the completion of its road "and no longer." The act of February 9, 1850, entitled "An act to incorporate the Nashville and Louisville Railroad Company," exempted all of its property from taxation for and during its corporate life.

There is no doubt of the validity of these exemptions. The power of a Legislature under our system, when unrestrained by some constitutional limitation, to contract in an act creating a corporation for an exemption of its property from taxation has been too long established to be now called in question. The supreme court, in the Binghampton Bridge case, 3 Wall., 73, say that the question has been "settled by an unbroken course of decisions," both in the "Federal and State courts;" that "all courts are estopped from questioning the doctrine;" that "the security of property rests upon it," and that "a departure from it now would involve dangers to society that cannot be foreseen, shock the sense of justice of the country, unhinge its business interests, and weaken, if it did not destroy, the respect which has always been felt for the judicial department."

In Humphry *vs.* Pegues, 16 Wall., 249, the same court reiterates the doctrine, and, among things, say:

"Another question is raised, to wit, that a Legislature does not possess the power to grant to a corporation a perpetual exemption from taxation; that it is not competent for one Legislature, by binding another, to compass the death of the State. It is too late to raise this question in this court. It has been held that the Legislature has the power to bind the State in relinquishing its power to tax a corporation. It has been held that such a provision in a charter of incorporation constitutes a contract which the State may not subsequently impair. These doctrines have been reaffirmed

and reiterated so recently as 1871, in an opinion of Mr. Justice Davis, in the case of the Wilmington R. R. *vs.* Reich, 13 Wall., 264. They must be considered as settled."

These rulings have been adopted and applied in numerous cases in Tennessee. (See Knoxville & O. R. Co. *vs.* Hicks 9 Baxt., 442.)

Assuming, under these authorities, that the exemptions granted to the East Tennessee and Virginia and Nashville and Louisville Railroad Companies are valid contracts, that cannot be impaired by legislation, we will proceed to the next inquiry made necessary by the exigencies of the case, to wit: Did the Cincinnati, Cumberland Gap and Charleston Railroad Company acquire under its charter a like exemption of its property? The act of November 18, 1853, incorporating the Cincinnati, Cumberland Gap and Charleston Railroad Company, among other things, enacted that said "company shall be, and it is hereby, invested with all the rights, powers, and privileges and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except as otherwise provided in this chapter;" and the act of December 22d following, entitled "An act to charter the Lexington and Knoxville Railroad Company," further provides "that the Cincinnati, Cumberland Gap and Charleston Railroad Company shall be, and it is hereby, invested with all the rights, powers, and privileges and subject to all the restrictions and liabilities of the East Tennessee and Virginia Railroad Company, except as otherwise provided in this act and the act this is intended to amend."

The complainant insists that by virtue of the foregoing enactment the Cincinnati, Cumberland Gap and Charleston Railroad Company did, in common with the two companies referred to, acquire an immunity from taxation to the same extent as it had been conferred on said former companies; but this has been expressly denied by the supreme court of this State in two decisions: Wilson *vs.* Gains, 2 Leg. Rep., 31, and

East Tennessee, V. & G. R. R. *vs.* Hamilton Co., decided in 1877, but not reported. We have heretofore given our reasons for dissenting from these cases, and subsequent reflection and investigation have confirmed the conclusions then reached. (Louisville & N. R. Co. *vs.* Gains, 3 Fed. Rep., 266.) In thus dissenting from the ruling of the supreme court of Tennessee we followed, as we were bound to do, a contrary doctrine announced by the Supreme Court of the United States. The statute of a State, say this last tribunal, "may make a contract as well by reference to a previous enactment making one, and extending rights to another party." (Binghampton Bridge case, *supra.*) Here the power of the Legislature to enter into a contract in the way pointed out is affirmed. But the court does not undertake to say in that case that the terms employed in the statutes under which complainant claims, to wit, "rights, powers, and privileges," are sufficient to invest the Cincinnati, Cumberland Gap and Charleston Railroad Company with the immunity from taxation granted to the two companies to whose charters reference is made. Not at all. But in Humphreys *vs.* Pegues, 16 Wall., 244, where this precise question arose, the court did so hold.

The pertinent facts of the last case are briefly these: South Carolina, in 1851, incorporated a railroad company without exemption from taxation. But in 1855, by an amendatory act, it conferred that privilege; and in 1863, by another act incorporating another and different railroad company, it was provided that "all the rights, powers, and privileges" conferred on the previous corporation should be conferred on the second company. Upon these facts the Supreme Court held (1) that the property of the second corporation was made, by the act of 1863, exempt from taxation; (2) that the Legislature could not without contravening the national Constitution repeal the act of 1863 so as to subject said last company's property to taxation; and, among other things, the learned justice who delivered the opinion of the court said:

"All the *privileges* as well as the powers and rights of the first corporation were granted to the latter. A more important or more comprehensive privilege than a perpetual exemption from taxation can scarcely be imagined. It contains the essential idea of a peculiar benefit or advantage of a special exemption from a burden falling upon others."

The precise point decided is that the word "privilege" did include the exemption from taxation granted to the former corporation; and although numerous cases have since arisen involving kindred questions, which have been elaborately discussed and distinguished from Humphry *vs.* Pegues, the latter case has been in no way weakened or qualified, but the same has been, by clear implication, several times reaffirmed. Mr. Justice Matthews, in the case of Tennessee *vs.* Whitworth, 22 Fed. Rep., 81, said:

"The language of the sixth section (which gave to the Nashville and Decatur Railroad Company all the rights and privileges previously granted to the Nashville and Chattanooga Railroad Company) is precisely equivalent to a declaration that the Nashville and Decatur Railroad Company shall be governed by the charter of the Nashville and Chattanooga Railroad Company as though it had been re-enacted as such, with the name of the former company inserted instead of the latter, repeating in detail the language of each section, granting rights and privileges and imposing restrictions and liabilities."

These adjudications are conclusive upon this court, and unless there is some fact not yet adverted to that renders them inapplicable they must control this case.

The defendant insists that the Cincinnati, Cumberland Gap and Charleston Railroad Company took nothing under that clause of its charter professing to vest it with the rights, powers, and privileges of the Nashville and Louisville Railroad Company. Its contention is that the act to incorporate the last-named company provided that it "should become a law whenever the State of Kentucky may enact the same

for the same purpose." No such co-operative legislation has been enacted, and no company has been organized under said act. Upon these conceded facts the complainant insists that said act never took effect or became a law, and that no such corporation as the Nashville and Louisville Railroad Company ever existed; and hence the charter of the Cincinnati, Cumberland Gap and Charleston Railroad Company, professing to vest in the latter company all the rights, powers, and privileges and onerate it with all the restrictions and liabilities of such non-existing company, passed nothing. It has been so held by one of the circuit judges of the State. Yet while his judgment was subsequently affirmed both by the State and national supreme courts, neither of them discussed this particular question nor intimated an opinion in regard to it, unless the solicitude manifested to find other and more plausible grounds upon which to rest their decisions may be regarded as an intimation against the views of the subordinate court. (Railroad Co. *vs.* Hamblen Co., 102 U. S., 273.)

This ruling is, in my judgment, manifestly erroneous. The act incorporating the Nashville and Louisville Railroad Company was enacted by the Legislature in conformity with the requirements of the constitution. It was duly enrolled, attested by the speakers of both houses, and regularly promulgated and published as one of the statutes of that session. The courts have always taken, whenever it came in question, and still continue to take, judicial notice of its existence and contents. The Legislature knew, when it passed the act to incorporate the Cincinnati, Cumberland Gap and Charleston Railroad Company, that no company had been organized under it; and, under the construction contended for by the defendant, the act in question would be converted into a meaningless farce. Such a construction is precluded by every reasonable hypothesis. It is, to my mind, clear that the Legislature intended to incorporate the act to charter the Nashville and Louisville Railroad Company, in all its

details, into and make it a part of the act to incorporate the Cincinnati, Cumberland Gap and Charleston Railroad Company's charter, and in this way to confer upon and vest in said last-named corporation all the rights, powers, and privileges prescribed therein and granted thereby, including the exemption claimed.

But we need not pursue this discussion any further, as it is not essential to a correct determination of this case.

The act of December 22, 1853, herein previously referred to, also assumes to vest the Cincinnati, Cumberland Gap and Charleston Railroad Company with all the rights, powers, and privileges previously granted to the East Tennessee and Virginia Railroad Company. This company had a lawful existence. Among its rights, powers, and privileges was an immunity from taxation for twenty years from and after the completion of its road. This period has not yet elapsed. If this immunity was vested in the Cincinnati, Cumberland Gap and Charleston Railroad Company and was subsequently passed to the complainant, it is not important to inquire in this case whether it acquired, in the manner alleged, the rights, powers, and privileges of the Nashville and Louisville Railroad Company or not, for if the immunity was acquired in virtue of the reference in its charter to the East Tennessee and Virginia Railroad Company's charter it has not yet expired, and the complainant is entitled to be protected in the enjoyment of its said privilege until it is lost by the lapse of time.

Having shown, as we think, that the Cincinnati, Cumberland Gap and Charleston Railroad Company was by law vested with an immunity from taxation, we will next proceed to inquire whether that immunity has been passed to and invested in the complainant. Ordinarily no such immunity will pass to a purchaser as an incident to the acquisition of the property exempt. (Morgan *vs.* Louisiana, 93 U. S., 217; Wilson *vs.* Gains, 103 U. S., 417, and Louisville & N. R. Co. *vs.* Palmes, 109 U. S., 244; S. C. 3 Sup. Ct. Rep.,

193.) But such an immunity may pass to a purchaser if it is authorized by law. (Memphis R. Co. *vs.* Commissioners, 112 U. S., 617; S. C. 5 Sup. Ct. Rep., 299.) So let us see if there was any sufficient authority for the transfer claimed by the complainant in this case.

By the act of February 11, 1852, the Legislature of Tennessee projected a general system of railroad improvement for the State. In it the State undertook to aid private enterprise in the building of various railroads by loaning to the several companies organized for the purpose State bonds on the conditions therein prescribed. These provisions were precautionary, and were intended to indemnify the State against loss; and, among other reservations of power for the accomplishment of that object, the third section of the act provided "that the State of Tennessee upon the issuance of said bonds and by virtue of the same shall be invested with a lien or mortgage, without a deed from the company, upon the road-bed, right of way, grading, etc., * * * acquired or to be acquired, by the companies" to which aid was to be extended; and, to avoid all possible conflict between the State and other creditors of said aided corporations, the fourth section of said act further provided "that it shall not be lawful for any one of said companies to give, create, or convey to any person or persons whatever any lien, incumbrance, or mortgage of any kind which shall have priority over or come in conflict with the lien of the State herein secured, and every such lien, incumbrance, or mortgage shall be null and void as against the lien of the State;" and, as a further precaution, the Legislature reserved the power to thereafter "enact all such laws as may be deemed necessary to protect the interest of the State against loss in consequence of the issuance of said bonds." Aid was accordingly extended under and pursuant to the provisions of said act to the Cincinnati, Cumberland Gap and Charleston Railroad Company.

Among other conditions of this loan was an undertaking

by each of said borrowing companies to provide for the payment of the semi-annual interest as the same accrued. The Cincinnati, Cumberland Gap and Charleston Railroad Company failed to do this, but, along with other companies similarly obligated, neglected to provide for the payment of said interest as it matured. Thereupon the Legislature, in the exercise of its reserved authority to enact such laws as might be deemed necessary to protect the State's interest, passed the following enactments authorizing and providing for the sale of delinquent railroads. By the first, to wit, the act of July 1, 1870, three commissioners were appointed to make the sale, who, encountering some and foreseeing other legal obstacles to an advantageous sale, declined to proceed until further legislation could be had, and by a formal report suggested and recommended further and remedial legislation.

It was in deference to their recommendation that the act of December 22, 1870, was passed. This act authorized and required said commissioners to file a bill for and in behalf of the State, in the chancery court at Nashville, against all delinquent railroad companies, including the Cincinnati, Cumberland Gap and Charleston Railroad Company, for the purpose of enforcing, under the decrees of said court, a sale of said several delinquent companies' property for the benefit of the State; and among the powers conferred by said act in said court was the authority "to define, as may be thought proper," what "the rights and duties and liabilities" of the purchasers should be, the tenth section of said act declaring that the purchaser should be vested with "all the rights, privileges, and immunities appertaining to said franchise to be sold under the act of incorporation and amendments thereto and the general improvement laws of the State and acts amendatory thereof."

Thereupon a bill was filed in accordance with the requirements of the foregoing statute and prosecuted to a final hearing. In the progress of the case the court, in discharge of the duty enjoined upon it by the statute,

to adjudicate and determine all questions of law and matters of controversy of whatever nature, whether of law or of fact, that had arisen or that might arise touching the right and interest of the State, and also of the stockholders, bondholders, creditors, and others in said road, and to define "what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads," did, among other things not necessary to be recited, declare that the State had the right, under the law, to have said "roads, property, and franchises" sold in satisfaction of its lien, and that the purchasers thereof would take said "roads, property, and franchises free from all claims whatsoever," except such as were reserved by the decree to secure the payment of the purchase-money, together with "all the rights, privileges, and immunities appertaining to the franchise so sold, under its act of incorporation and the amendments thereto, and the general improvement law of the State and acts amendatory thereof." It furthermore adjudged that said company was indebted to the State in the sum of $1,404,680 for bonds previously loaned it and the matured and unpaid interest thereon, and decreed a sale of said road, property, and franchises upon the terms and conditions set forth in the decree; and at the sale made pursuant thereto the complainant, through its agents, became the purchaser thereof, and upon complainant's application, duly made, said sale was confirmed, and "all the right, title, interest, claim, and demand which said Cincinnati, Cumberland Gap and Charleston Railroad Company, its stockholders, creditors, or the State of Tennessee," had in and to said "property, right, franchises, and privileges of said company" which were sought to be and under the decrees in said cause were ordered to be sold and transferred were divested out of said parties, respectively, and vested in the complainant with all the legal and equitable rights incident thereto, as defined in the former decrees in said cause, for the period prescribed by law.

Thus it is insisted that the complainant has succeeded to the ownership of the property and franchises and privileges of the Cincinnati, Cuberland Gap and Charleston Railroad Company, including the immunity from taxation previously possessed by said company. This contention, however, is denied by the defendant.

If, as we have endeavored to show, the exemption originally claimed was valid in favor of the Cincinnati, Cumberland Gap and Charleston Railroad Company, it is clear that it was the intention and purpose of the Legislature to have transferred it, under the legislation and judicial proceedings recited above, to the complainant as incident to its purchase; but it is now contended that said transfer was in contravention of the constitution of 1870, and therefore invalid and inoperative; and in support of this position the case of Trask *vs.* Maguire, 18 Wall., 391, is recited on.

Trask *vs.* Maguire is in many of its facts very much like this case; but the two cases are by no means identical. Missouri, like Tennesse, loaned its bonds to railroad corporations to aid them in the construction of their roads, and retained statutory liens on the roads and their appurtenances, with authority, in default of payment, to sell the same. The power to sell was by the law vested in the Governor. He was authorized to sell at auction, and to the highest bidder, and, in certain contingencies, to buy the road and property for the State, subject to such disposition as the Legislature might thereafter direct. After this legislation the State, in July, 1865, adopted a new constitution containing the following clauses:

"No property, real or personal, shall be exempt from taxation, except property of the State. The General Assembly shall not pass any special law exempting the property of any named person or corporation from taxation."

The railroad in question, to which the State had loaned its bonds, and on whose road and appurtenances it had re-

tained a lien, coupled with a reservation of a right to sell, having failed to meet its obligation to the State, was proceeded against and its road and appurtenances sold and bought in by the Governor for the State. This vested the franchise of the company and the title to its property in the State. Being thus vested, the Legislature, by an act passed for the purpose, appointed commissioners to "sell, convey, transfer, and make over said road and all its franchises, privileges, and rights, title, and interest, appertaining to the road," and declared therein that "the purchaser thereof should acquire by his purchase all the rights, franchises, privileges, and immunities which were possessed and enjoyed by the original corporation under its charter and laws amendatory thereof." The commissioners thus appointed sold and conveyed the road as they were required by the law to do.

On these facts it became a question whether the purchaser did acquire the immunity from taxation possessed by the original corporation. The supreme court held that it did not but on grounds not at all applicable to this case. The property of the first corporation, say the court, "was undoubtedly exempt from State and county taxes; but when the State became the purchaser the immunity ceased. The property stood in its hands precisely the same as any other unincumbered property of the State, exempt from taxation, not by any previous stipulation of the company, but as all property of the State is exempt. The act under which the resale was made provided that the purchasers should have all the rights, franchises, privileges, and immunities which were enjoyed by the defaulting company under its charter and laws amendatory thereof. The question, therefore, was whether the Legislature was competent to grant the immunity claimed under the constitution which went into operation previous to the passage of the act authorizing the sale; and, proceeding to argue the question, the court say: "The plain meaning of the ordinance and acts under which said sale was made" was that the sale should be made "in

conformity with such laws as the Legislature may constitutionally pass, not in conformity with any law which the Legislature could devise if it had unlimited discretion in the matter;" and to this the court adds that it is "clear that it never was intended" that the sale of the franchise of a defaulting corporation should renew an exemption which had once ceased to exist and which the constitution had declared should never thereafter be created; that the inhibition of the constitution applies in all its force against the renewal of an exemption equally as against its original creation, and this inhibition the Legislature could not disregard in providing for the sale of the property which it had purchased.

It will be seen that this decision rests upon two very satisfactory grounds: (1) That the ordinance and acts under and in virtue of which the resale of the property and franchises were made never intended to vest the purchaser with the immunity from taxation possessed by the original corporation; and (2) if the Legislature had so intended, it could not, in the face of the constitution then existing and prohibiting exemptions, authorize the renewal of an exemption that had been previously extinguished; but this is a very different case. Here the State, being the creditor of an insolvent corporation, was anxious to collect its debt, to secure the payment of which it held a lien on the company's property and franchises, with authority to legislate for its own benefit in relation thereto. A valuable part of this franchise was the exemption of the company's property from taxation. This exemption was a vested right when the constitution of 1870 went into operation, beyond the reach of a constitutional convention or legislative action. It was competent for the State to have legislated, as the State of Missouri did, to have authorized the Governor or some other agent to have bought in the property when sold in the name and for the benefit of the State; and if it had done this the franchise would have revested in the State and been extinguished, and could not, in view of the explicit

provisions contained in the constitution of 1870 requiring all property to be taxed, have been renewed.

But this policy was not adopted. The exemption existed; it was valuable property, owned by an insolvent debtor, and in conscience liable for its debts, although there was at the time no remedy by which it could have been subjected thereto. In this exigency the State, being both creditor and legislator, called its reserve power into requisition and provided a remedy. Being desirous of realizing the highest possible price for its debtor's property, it directed a sale of the company's franchise as well as its visible property, and, by way of encouraging bidders and enhancing the price, guaranteed, through a solemn adjudication of a competent court made by authority of law, that the purchasers should by their purchase acquire with a title to the property the rights, privileges, and immunities possessed, and be subject to all the duties and obligations previously resting on the defaulting corporations, as defined by their charters and amendatory legislation.

That it was the intention of the Legislature and the court to convey with said property and franchises the immunities granted, as well as to onerate the purchasers with the obligations and duties imposed by the charters of the defaulting companies, is clearly deducible from the legislation in question and the decrees of the court made thereunder. If so, we have successfully distinguished this case from that of Trask *vs.* Maguire—that is to say, the legislation in the last-named case, as interpreted by the court, did not intend to vest the purchaser with an immunity from taxation, whereas in this case it did.

This, then, brings us to the consideration of the second proposition: Had the Legislature the constitutional authority, not to grant an immunity from taxation after 1870, but to provide by law a remedy whereby an outstanding vested franchise, including, among other privileges, an immunity from taxation, could be subjected to a judicial sale for the

payment of the just debts of its owner, and for the transfer of the same, in connection with a conveyance of the property to which it was appurtenant, to a purchaser? We think, both upon reason and authority, that it had. Such power has been exercised from time immemorial. Legislatures have without objection, from time to time, as the exigencies of the State made it necessary, enlarged remedies by mesne and final processes for the collection of debts. In this way they have made property which could not be reached by the ordinary processes of the law amenable to creditors through some new and appropriate statutory remedy. In this way incorporeal and other valuable interests that could only be reached through courts of equity have been subjected to executions at law. Other illustrations might be given, but it is not deemed necessary. Wherefore, then, is it that the Legislature of Tennessee could not in the exercise of its legislative power provide a remedy for subjecting the Cincinnati, Cumberland Gap and Charleston Railroad Company's property, with its vested privileges and other immunities, to sale for the payment of its debts?

In Memphis & L. R. R. Co. *vs.* Railroad Com'rs, 112 U. S., 609; S. C. 5 Sup. Ct. Rep., 299, the court say: "That a franchise to be a corporation is not a subject of sale and transfer, *unless made so by statute which provides a mode for exercising it*, thereby clearly implying that such sale and transfer could be authorized by statute." If the Legislature could do this, this controversy is at an end. We have here shown that such sale and transfer was authorized and the particular mode of executing it provided for. No new exemption is created; the property of said corporation was already exempt from the burden of taxation; the State had no constitutional right to exact a revenue from it; it could have provided for the sale of the property and franchises without including the exemption, and if it had elected to do this the State would have regained its power of taxation over the same. But the Legislature expressly submitted the

question to the judgment of the court in a suit to which it was a party, directing, in order that there might be no misconception in regard to the matter, that the court should by decree define what the rights and obligations of purchasers should be. The court, in obedience to the legislative mandate, declared that the purchaser would acquire under such sale "all the right, title, interest, claim, and demand which the Cincinnati, Cumberland Gap and Charleston Railroad Company, its stockholders, creditors, the State of Tennessee, and all other parties to said suit herein and to the property, rights, franchises, and privileges of said company," and that the same should "be divested out of them and vested" in the purchaser, and it was subsequently so decreed. This is an adjudication of the question, made at the instance, under legislative authority, and for the benefit of the State. It was so adjudged in order that bidders might be accurately and judicially advised of the rights which they would acquire in case their bids were accepted. The court defined their rights, declared that they would acquire "all the rights, privileges, and immunities" which the delinquent companies possessed under their charters and amendatory legislation. This decree was pronounced by a competent court in a suit in which the State by her own volition was complainant for her own benefit and from which she had the right of appeal. But no objection was interposed, no appeal taken, and no writ of error prosecuted. The adjudication remains unreversed and in full force, and cannot be collaterally attacked in this proceeding. The State having been a party to said suit and acquiescing in the decision made therein, the sale having been made and the bids offered and received on the faith of said decrees, and said sale having been reported and confirmed by the court, and the immunity from taxation having been vested, along with the other corporate privileges, in the purchasers, the respective rights, liabilities, and obligations of the parties are fixed, and the State, as well as other parties to the cause, is estopped

from claiming anything in contravention of said adjudication. The State is as much bound by the adjudication as an individual would be under the same facts.

The adjudication of the Supreme Court of the United States in Railroad Co. *vs.* Hamblen Co., *supra*, was made upon an imperfect and limited statement of the facts, and is no authority against the decision made herein. The facts of this case are substantially identical with those of Railroad Co. *vs.* Hicks, *supra*, and the decision made therein by the supreme court of the State is in entire harmony with the views expressed here.

The immunity from taxation may or may not have been a judicious grant. This is a proposition which we are not called on to discuss. Our duty is fully discharged when we declare the law as we find it to exist, and protect the parties in the enjoyment of their legal rights. We think that the legislation and judicial proceedings recited exempts that portion of the complainant's property acquired from the Cincinnati, Cumberland Gap and Charleston Railroad Company, and that it is entitled to the preliminary injunction prayed for.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 246.

P. P. PICKARD, COMPTROLLER, &c.,
vs.
EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY.

STIPULATION.

The parties, by their solicitors, stipulate that the appendix to the brief of the solicitor of the appellant contains a transcript of the record in the case of "Hamblen County *vs.* East Tennessee, Virginia & Georgia Railroad Company" (reported in 102 U. S., 273), and that the appendix to the brief of the solicitor for the appellee contains copies of the original bill and the decrees of July 6, 1871; September 30, 1871, and October 30, 1871, in the case of the "State of Tennessee *vs.* The Edgfield & Kentucky Railroad Company *et als.*," lately pending in the chancery court of Davidson county, Tennessee, and that all of said records may be treated and looked to as if they were printed as a part of the transcript or record in this cause.

This April 9th, 1889.

G. W. PICKLE,
Sol. for Appellant.
WM. M. BAXTER,
Solicitor for Appellee.

[Endorsed:] Supreme Court U. S. 1888, Oct'r term. No. 246. P. P. Pickard, comptroller of the State of Tennessee, app't, *vs.* The East Tennessee, Virginia & Georgia Railroad Co. Stipulation amending record.

[Stamped:] Office Supreme Court U. S. Filed Apr. 9, 1889. James H. McKenney, clerk.